



**AGENDA**  
**CITY COUNCIL OF THE CITY OF MORENO VALLEY**  
**MORENO VALLEY COMMUNITY SERVICES DISTRICT**  
**CITY AS SUCCESSOR AGENCY FOR THE**  
**COMMUNITY REDEVELOPMENT AGENCY OF**  
**THE CITY OF MORENO VALLEY**  
**MORENO VALLEY HOUSING AUTHORITY**  
**BOARD OF LIBRARY TRUSTEES**

**September 22, 2015**

**REGULAR MEETING – 6:00 PM**

**City Council Study Sessions**

First & Third Tuesdays of each month – 6:00 p.m.

**City Council Meetings**

Special Presentations – 5:30 P.M.

Second & Fourth Tuesdays of each month – 6:00 p.m.

**City Council Closed Session**

*Will be scheduled as needed at 4:30 p.m.*

City Hall Council Chamber – 14177 Frederick Street

Teleconference:

25872 Margaret Avenue

Moreno Valley, CA 92551

*Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, in compliance with the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to Guy Pegan, ADA Coordinator, at 951.413.3120 at least 48 hours before the meeting. The 48-hour notification will enable the City to make reasonable arrangements to ensure accessibility to this meeting.*

Jesse L. Molina, Mayor

Dr. Yxstian A. Gutierrez, Mayor Pro Tem  
Jeffrey J. Giba, Council Member

George E. Price, Council Member  
D. LaDonna Jempson, Council Member

**AGENDA**  
**CITY COUNCIL OF THE CITY OF MORENO VALLEY**  
**September 22, 2015**

**CALL TO ORDER - 5:30 PM**

**SPECIAL PRESENTATIONS**

1. Proclamation Recognizing Fire Prevention Week - "Hear the Beep Where You Sleep" - October 4-10, 2015

**AGENDA  
JOINT MEETING OF THE  
CITY COUNCIL OF THE CITY OF MORENO VALLEY  
MORENO VALLEY COMMUNITY SERVICES DISTRICT  
CITY AS SUCCESSOR AGENCY FOR THE  
COMMUNITY REDEVELOPMENT AGENCY OF THE  
CITY OF MORENO VALLEY  
MORENO VALLEY HOUSING AUTHORITY  
AND THE BOARD OF LIBRARY TRUSTEES**

**\*THE CITY COUNCIL RECEIVES A SEPARATE STIPEND FOR CSD  
MEETINGS\***

**REGULAR MEETING – 6:00 PM  
SEPTEMBER 22, 2015**

**CALL TO ORDER**

Joint Meeting of the City Council, Community Services District, City as Successor Agency for the Community Redevelopment Agency, Housing Authority and the Board of Library Trustees - actions taken at the Joint Meeting are those of the Agency indicated on each Agenda item.

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

Pastor Charles Gibson, Breakthrough Church of God in Christ

**ROLL CALL**

**INTRODUCTIONS**

**PUBLIC COMMENTS ON MATTERS ON THE AGENDA WILL BE TAKEN UP AS THE ITEM IS CALLED FOR BUSINESS, BETWEEN STAFF'S REPORT AND CITY COUNCIL DELIBERATION (SPEAKER SLIPS MAY BE TURNED IN UNTIL THE ITEM IS CALLED FOR BUSINESS.)**

**PUBLIC COMMENTS ON ANY SUBJECT NOT ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL**

Those wishing to speak should complete and submit a BLUE speaker slip to the Bailiff. There is a three-minute time limit per person. All remarks and questions shall be addressed to the presiding officer or to the City Council.

**JOINT CONSENT CALENDARS (SECTIONS A-D)**

All items listed under the Consent Calendars, Sections A, B, C, and D are considered to be routine and non-controversial, and may be enacted by one motion unless a member of the City Council, Community Services District, City as Successor Agency for the Community Redevelopment Agency, Housing Authority or the Board of Library Trustees

requests that an item be removed for separate action. The motion to adopt the Consent Calendars is deemed to be a separate motion by each Agency and shall be so recorded by the City Clerk. Items withdrawn for report or discussion will be heard after public hearing items.

#### **A. CONSENT CALENDAR-CITY COUNCIL**

- A.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

**Recommendation:** Waive reading of all Ordinances.

- A.2. MINUTES - CITY COUNCIL - REGULAR MEETING - SEP 8, 2015 6:00 PM

**Recommendation:** Approve as submitted.

- A.3. APPROVAL OF CONSTRUCTION CONTRACT CHANGE ORDER FOR THE DUNLAVY COURT STORM DAMAGE REPAIRS PROJECT NO. 804 0006 70 77 (Report of: Public Works)

**Recommendations:**

1. Approve the appropriation of \$400,000 to fund Dunlavy Court Storm Damage Repairs from the General Fund (Account No. 1010-70-77-80004-720199).
2. Award a construction contract change order (CCCO) for the Dunlavy Court Storm Damage Repairs to Mamco, Inc. dba Alabbasi, 764 W. Ramona Expressway, Suite C, Perris, CA 92571, the lowest responsible bidder, for the East Sunnymead Boulevard Storm Drain Improvements project.
3. Authorize the Public Works Director/City Engineer to execute the CCCO with Mamco, Inc. dba Alabbasi.
4. Authorize the issuance of a Purchase Order Amendment to Mamco, Inc. dba Alabbasi for the amount of \$359,892 (\$299,910 bid amount plus 20% contingency) when the CCCO has been signed by all parties.
5. Authorize the Public Works Director/City Engineer to execute any subsequent related minor change orders to the CCCO with Mamco, Inc. dba Alabbasi up to, but not exceeding, the 20% contingency amount of \$59,982, subject to the approval of the City Attorney.

- A.4. LIST OF PERSONNEL CHANGES (Report of: Administrative Services)

**Recommendation:**



1. Ratify the list of personnel changes as described.

A.5. PA05-0054 (PM 33637) – APPROVE PARCEL MAP 33637 LOCATED ON THE SOUTH SIDE OF IRONWOOD AVENUE BETWEEN WELLER PLACE AND KILGORE STREET. OWNER – ROSE RIOS. (Report of: Public Works)

**Recommendations:**

1. Approve Parcel Map 33637 for PA05-0054.
2. Authorize the City Clerk to sign the map and transmit said map to the County Recorder's Office for recordation.

A.6. RESOLUTION OF THE CITY OF MORENO VALLEY SERVING AS THE SUCCESSOR AGENCY FOR THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE PERIOD OF JANUARY 1, 2016 THROUGH JUNE 30, 2016 (ROPS 15-16 B) (Report of: Financial & Management Services)

**Recommendations: That the City Council as Successor Agency:**

1. Adopt Resolution No. SA 2015-02. A Resolution of the City Council of the City of Moreno Valley, California, Serving as Successor Agency to the Community Redevelopment Agency of the City of Moreno Valley Approving the Recognized Obligation Payment Schedule and Administrative Budget for the Period of January 1, 2016 through June 30, 2016 (ROPS 15-16 B), and Authorizing the City Manager acting for the Successor Agency or her Designee to Make Modifications Thereto.
2. Authorize the City Manager acting for the Successor Agency or her Designee to make modifications to the Schedule.
3. Authorize the transmittal of the ROPS 15-16 B, for the period of January 1, 2016 through June 30, 2016, including Administrative Budget for the said period, ("Exhibit A") to the Oversight Board for review and approval.

A.7. MUNICIPAL SHELTER SPAY NEUTER GRANT AWARD (Report of: Administrative Services)

**Recommendation:**

1. Receive and accept a grant award in the amount of \$15,000 from the California Department of Food & Agriculture for the purpose of providing low to no cost spaying and neutering of dogs and cats

owned by individuals residing in the City.

## **B. CONSENT CALENDAR-COMMUNITY SERVICES DISTRICT**

- B.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

**Recommendation:** Waive reading of all Ordinances.

- B.2. MINUTES - REGULAR MEETING OF SEPTEMBER 8, 2015 (See A.2)

**Recommendation:** Approve as submitted.

## **C. CONSENT CALENDAR - HOUSING AUTHORITY**

- C.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

**Recommendation:** Waive reading of all Ordinances.

- C.2. MINUTES - REGULAR MEETING OF SEPTEMBER 8, 2015 (See A.2)

**Recommendation:** Approve as submitted.

## **D. CONSENT CALENDAR - BOARD OF LIBRARY TRUSTEES**

- D.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

**Recommendation:** Waive reading of all Ordinances.

- D.2. MINUTES - REGULAR MEETING OF SEPTEMBER 8, 2015 (See A.2)

**Recommendation:** Approve as submitted.

## **E. PUBLIC HEARINGS**

Questions or comments from the public on a Public Hearing matter are limited to five minutes per individual and must pertain to the subject under consideration.

Those wishing to speak should complete and submit a GOLDENROD speaker slip to the Bailiff.

- E.1. PUBLIC HEARING TO ADOPT SUBSTANTIAL AMENDMENT #1 TO THE 2015-16 ANNUAL ACTION PLAN (Report of: Financial & Management Services)

**Recommendations: That the City Council:**

1. Conduct a Public Hearing to allow public comment on the proposed Substantial Amendment #1 to the FY 2015-2016 Annual Action Plan.
2. Review and adopt the proposed Substantial Amendment #1 to the FY 2015-2016 Annual Action Plan.
3. Approve the necessary revenue and expense appropriations and authorize the Chief Financial Officer to process the adjustments.
4. Authorize the City Manager to reallocate grant funds between HUD-approved grant activities.

**F. ITEMS REMOVED FROM CONSENT CALENDARS FOR DISCUSSION OR SEPARATE ACTION**

**G. REPORTS**

**G.1. CITY COUNCIL REPORTS ON REGIONAL ACTIVITIES**

(Informational Oral Presentation - not for Council action)

March Joint Powers Commission (JPC)

Riverside County Habitat Conservation Agency (RCHCA)

Riverside County Transportation Commission (RCTC)

Riverside Transit Agency (RTA)

Western Riverside Council of Governments (WRCOG)

Western Riverside County Regional Conservation Authority (RCA)

School District/City Joint Task Force

Southern California Association of Governments (SCAG)

**G.2. FUNDING PROPOSAL TO REHABILITATE CERTAIN DISTRESSED STREETS IN THE EDGEMONT NEIGHBORHOOD (Report of: Public Works)**

**Recommendations: That the City Council:**

1. Designate all potential project savings from the Nason Street Improvement Project -- currently estimated at \$270,000 -- to the Citywide Annual Pavement Resurfacing Program.
2. Direct staff to return in November 2015 with recommendations to appropriate available funds to rehabilitate certain distressed streets in

the Edgemont neighborhood.

- G.3. AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT BY AND AMONG CITY OF MORENO VALLEY, MORENO VALLEY HOUSING AUTHORITY, AND HABITAT FOR HUMANITY, RIVERSIDE, INC. (Report of: Financial & Management Services)

**Recommendations: That the City Council and Housing Authority:**

1. Approve the Amended and Restated Affordable Housing Agreement by and among City of Moreno Valley, Moreno Valley Housing Authority and Habitat for Humanity, Riverside, Inc.
2. Authorize the City Manager and Executive Director of the Moreno Valley Housing Authority, or his or her designee, to prepare, approve and execute all project-related documents.
3. Authorize the City Manager to approve future amendments to the Affordable Housing Agreement (“AHA”) or undertake any other actions necessary, proper or convenient to the implementation of the AHA, as long as such revisions do not substantially increase the City’s stated obligations or materially change the uses or development permitted on the site.
4. Approve the Revenue and Expense Appropriations and authorize the Chief Financial Officer to process the necessary budget adjustments.

- G.4. CERTIFY RIVERSIDE HOUSING DEVELOPMENT CORPORATION AS A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) (Report of: Financial & Management Services)

**Recommendations: That the City Council:**

1. Approve Resolution No. 2015-62. A Resolution of the City Council of the City of Moreno Valley, California, Certifying Riverside Housing Development Corporation (RHDC) as a Community Housing Development Organization (CHDO) Eligible to Receive HOME Program Funds for 22889 and 22899 Allies Place.

- G.5. RESOLUTION NO. 2015-63 APPOINTING CITY TREASURER (Report of: City Attorney)

**Recommendations: That the City Council:**

1. Take whatever action it deems appropriate.

- G.6. ENTER INTO AFFORDABLE HOUSING AGREEMENTS WITH RIVERSIDE HOUSING DEVELOPMENT CORPORATION FOR 22899 AND 22889 ALLIES PLACE (Report of: Financial & Management Services)

**Recommendations: That the City Council:**

1. Approve and formalize an Affordable Housing Agreement with Riverside Housing Development Corporation for the acquisition and rehabilitation of 22899 Allies Place for the purposes of creating affordable rental housing.
2. Approve and formalize an Affordable Housing Agreement with Riverside Housing Development Corporation for the acquisition and rehabilitation of 22889 Allies Place for the purposes of creating affordable rental housing.
3. Authorize the City Manager to execute said Agreements on behalf of the City in a form approved by the City Attorney.

**G.7. UPDATE ON CROSSING GUARDS (Report of: City Manager)**

**Recommendations: That the City Council:**

1. Receive an update on discussions with Moreno Valley Unified School District regarding the crossing guard program and provide direction to staff.

**G.8. EL NIÑO STORM PREPARATION STRATEGY PLAN AND EXPENDITURE AUTHORIZATION (Report of: Fire Department)**

**Recommendations: That the City Council:**

1. Approve the recommended El Niño Storm Preparation Strategy; and
2. Authorize the City Manager, or her designee, to appropriate and expend up to a maximum of \$1,500,000 for El Niño related preparation and response; and
3. Appropriate \$325,000 for immediate and upcoming labor, materials and equipment costs during the Preparedness/Mitigation Phase including:
  - a. Land Development Inspection Staff Cost - \$200,000
  - b. Materials - \$20,000
  - c. Equipment Rental - \$105,000

**G.9. CITY MANAGER'S REPORT**

(Informational Oral Presentation - not for Council action)

**G.10. CITY ATTORNEY'S REPORT**

(Informational Oral Presentation - not for Council action)

## **H. LEGISLATIVE ACTIONS**

### **H.1. ORDINANCES - 1ST READING AND INTRODUCTION**

H.1.1. ORDINANCE EMERGENCY FLOODING – SINGLE SOURCE AND SOLE SOURCE (Report of: City Attorney)

**Recommendations: That the City Council:**

1. Introduce Ordinance No. 903. An Ordinance of the City Council of the City of Moreno Valley, California, which allows the City to purchase goods, materials, and services through single and/or sole sourcing in response to and in preparation of the impending threat of flooding which is anticipated to be caused by El Niño.

H.1.2. INTRODUCE ORDINANCE NO. 904. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, AMENDING SECTION 6.04.040 OF CHAPTER 6.04 OF THE MORENO VALLEY MUNICIPAL CODE RELATING TO PUBLIC NUISANCES. (Report of: Public Works)

**Recommendation: That the City Council:**

1. Introduce Ordinance No. 904. An Ordinance of the City Council of the City of Moreno Valley, California, amending section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code relating to Public Nuisances.

### **H.2. ORDINANCES - 2ND READING AND ADOPTION - NONE**

### **H.3. ORDINANCES - URGENCY ORDINANCES**

H.3.1. ADOPT URGENCY ORDINANCE NO. 905. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, AMENDING SECTION 6.04.040 OF CHAPTER 6.04 OF THE MORENO VALLEY MUNICIPAL CODE RELATING TO PUBLIC NUISANCES (Report of: Public Works)

**Recommendation: That the City Council:**

1. Adopt Urgency Ordinance No. 905. An Ordinance of the City Council of the City of Moreno Valley, California, amending section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code relating to Public Nuisances.

H.3.2. URGENCY ORDINANCE EMERGENCY FLOODING – SINGLE SOURCE AND SOLE SOURCE (Report of: City Attorney)

**Recommendations: That the City Council:**

1. Adopt Urgency Ordinance No. 906. An Urgency Ordinance of the City Council of the City of Moreno Valley, California, which allows the City to purchase goods, materials, and services through single and/or sole sourcing in response to and in preparation of the impending threat of flooding which is anticipated to be caused by El Niño.

#### **H.4. RESOLUTIONS - NONE**

#### **CLOSING COMMENTS AND/OR REPORTS OF THE CITY COUNCIL, COMMUNITY SERVICES DISTRICT, CITY AS SUCCESSOR AGENCY FOR THE COMMUNITY REDEVELOPMENT AGENCY OR HOUSING AUTHORITY**

#### **ADJOURNMENT**

##### **PUBLIC INSPECTION**

The contents of the agenda packet are available for public inspection on the City's website at [www.moval.org](http://www.moval.org) and in the City Clerk's office at 14177 Frederick Street during normal business hours.

Any written information related to an open session agenda item that is known by the City to have been distributed to all or a majority of the City Council less than 72 hours prior to this meeting will be made available for public inspection on the City's website at [www.moval.org](http://www.moval.org) and in the City Clerk's office at 14177 Frederick Street during normal business hours.

## **CERTIFICATION**

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, certify that 72 hours prior to this Regular Meeting, the City Council Agenda was posted on the City's website at: [www.moval.org](http://www.moval.org) and in the following three public places pursuant to City of Moreno Valley Resolution No. 2007-40:  
City Hall, City of Moreno Valley  
14177 Frederick Street

Moreno Valley Library  
25480 Alessandro Boulevard

Moreno Valley Senior/Community Center  
25075 Fir Avenue

Jane Halstead, CMC,  
City Clerk

Date Posted:



**MINUTES**  
**CITY COUNCIL REGULAR MEETING OF THE CITY OF MORENO VALLEY**  
**September 8, 2015**

**CALL TO ORDER - 5:30 PM**

**SPECIAL PRESENTATIONS**

1. Proclamation Recognizing National Preparedness Month - Don't Wait. Communicate. Make Your Emergency
2. 1565 : Employee of the Quarter – 1st Quarter 2015, Kimberlee Krueger, Senior Applications Analyst
3. Business Spotlight a) Lorenzo's Pizza b) Wholesale Capital Corporation

**MINUTES  
JOINT MEETING OF THE  
CITY COUNCIL OF THE CITY OF MORENO VALLEY  
MORENO VALLEY COMMUNITY SERVICES DISTRICT  
CITY AS SUCCESSOR AGENCY FOR THE  
COMMUNITY REDEVELOPMENT AGENCY OF THE  
CITY OF MORENO VALLEY  
MORENO VALLEY HOUSING AUTHORITY  
BOARD OF LIBRARY TRUSTEES**

**REGULAR MEETING – 6:00 PM  
September 8, 2015**

**CALL TO ORDER**

The Joint Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley, Moreno Valley Housing Authority and the Board of Library Trustees was called to order at 6:04 p.m. by Mayor Molina in the Council Chamber located at 14177 Frederick Street.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Donovan Saadiq.

**INVOCATION**

The invocation was given by Pastor Michael Mupfawa, Moreno Valley Seventh Day Adventist.

**ROLL CALL**

Council:	Jesse L. Molina	Mayor
	Dr. Yxstian A. Gutierrez	Mayor Pro Tem
	Jeffrey J. Giba	Council Member
	D. LaDonna Jempson	Council Member
	George E. Price	Council Member

**INTRODUCTIONS**

Staff:	Michelle Dawson	City Manager
	Steve Quintanilla	Interim City Attorney
	Jane Halstead	City Clerk
	Richard Teichert	Chief Financial Officer
	Thomas M. DeSantis	Assistant City Manager
	Ahmad Ansari	Public Works Director/City Engineer
	Joel Ontiveros	Police Chief

Minutes Acceptance: Minutes of Sep 8, 2015 6:00 PM (CONSENT CALENDAR-CITY COUNCIL)

Abdul Ahmad  
 Chris Paxton  
 Betsy Adams  
 Mike Lee  
 Allen Brock

Fire Chief  
 Administrative Services Director  
 Parks & Community Services Director  
 Economic Development Director  
 Community Development Director

**PUBLIC COMMENTS ON MATTERS ON THE AGENDA WILL BE TAKEN UP AS THE ITEM IS CALLED FOR BUSINESS, BETWEEN STAFF'S REPORT AND CITY COUNCIL DELIBERATION (SPEAKER SLIPS MAY BE TURNED IN UNTIL THE ITEM IS CALLED FOR BUSINESS.)**

**PUBLIC COMMENTS ON ANY SUBJECT NOT ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL**

Mayor Molina announced that there will be 30 minutes of public comments not on the agenda. The remaining public comments will be heard prior to the City Council Reports and Closing Comments. In the event that the agenda item for such public comments has not been called by 9:00 p.m., it shall be called as the next item of business following the conclusion of any item being heard at 9:00 p.m.

Public Comments were received from the following:

Scott Heveran

1. Renewable Energy

Donovan Saadiq

1. Edgemont water problem
2. Relationships in neighborhood

Evan Morgan

1. Recalls
2. Radio Interviews

Joann Stephan

1. Disparity

Louise Palomarez

1. Radio station
2. Recalls

Leo Gonzalez

1. Initiative
2. Moreno Valley Jobs Coalition Initiative filed

Chris Baca

1. Employee's credentials

Tom Jerele, Sr.

1. Homeless situation

Santiago Hernandez

1. Opposition

Rafael Bruegueras

1. Warehouse jobs

JOINT CONSENT CALENDARS (SECTIONS A-D)

Mayor Molina opened the agenda items for the Consent Calendars for public comments; there being none, public comments were closed.

Motion to approve the Joint Consent Calendar Items A.1 through D.2 with the exception of item A.7 and A.9 which were removed for separate action.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Jeffrey J. Giba, Council Member
<b>SECONDER:</b>	George E. Price, Council Member
<b>AYES:</b>	Molina, Gutierrez, Giba, Jempson, Price

**A. CONSENT CALENDAR-CITY COUNCIL**

- A.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

- A.2. City Council - Special Meeting - Aug 17, 2015 5:00 PM

**Recommendation:** Approve as submitted.

- A.3. City Council - Special Meeting - Aug 18, 2015 5:00 PM

**Recommendation:** Approve as submitted.

- A.4. City Council - Special Meeting - Aug 19, 2015 5:00 PM

**Recommendation:** Approve as submitted.

- A.5. City Council - Regular Meeting - Aug 25, 2015 6:00 PM

**Recommendation:** Approve as submitted.

- A.6. CITY COUNCIL REPORTS ON REIMBURSABLE ACTIVITIES (Report of: City Clerk)

**Recommendation:**

1. Receive and file the Reports on Reimbursable Activities for the period

of August 19 - September 1, 2015.

A.7. This item has been moved to F.

A.8. LIST OF PERSONNEL CHANGES (Report of: Administrative Services)

**Recommendation:**

1. Ratify the list of personnel changes as described.

A.9. This item has been moved to F.

**B. CONSENT CALENDAR-COMMUNITY SERVICES DISTRICT**

B.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

B.2. MINUTES - SPECIAL MEETING OF AUGUST 17, 2015 (See A.2)

**Recommendation:** Approve as submitted.

B.3. MINUTES - SPECIAL MEETING OF AUGUST 18, 2015 (See A.3)

**Recommendation:** Approve as submitted.

B.4. MINUTES - SPECIAL MEETING OF AUGUST 19, 2015 (See A.4)

**Recommendation:** Approve as submitted.

B.5. MINUTES - REGULAR MEETING OF AUGUST 25, 2015 (See A.5)

**Recommendation:** Approve as submitted.

**C. CONSENT CALENDAR - HOUSING AUTHORITY**

C.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

C.2. MINUTES - SPECIAL MEETING OF AUGUST 17, 2015 (See A.2)

**Recommendation:** Approve as submitted.

C.3. MINUTES - SPECIAL MEETING OF AUGUST 18, 2015 (See A.3)

**Recommendation:** Approve as submitted.

C.4. MINUTES - SPECIAL MEETING OF AUGUST 19, 2015 (See A.4)

**Recommendation:** Approve as submitted.

C.5. MINUTES - REGULAR MEETING OF AUGUST 25, 2015 (See A.5)

**Recommendation:** Approve as submitted.

**D. CONSENT CALENDAR - BOARD OF LIBRARY TRUSTEES**

D.1. ORDINANCES - READING BY TITLE ONLY - THE MOTION TO ADOPT AN ORDINANCE LISTED ON THE CONSENT CALENDAR INCLUDES WAIVER OF FULL READING OF THE ORDINANCE.

D.2. MINUTES - SPECIAL MEETING OF AUGUST 17, 2015 (See A.2)

**Recommendation:** Approve as submitted.

D.3. MINUTES - SPECIAL MEETING OF AUGUST 18, 2015 (See A.3)

**Recommendation:** Approve as submitted.

D.4. MINUTES - SPECIAL MEETING OF AUGUST 19, 2015 (See A.4)

**Recommendation:** Approve as submitted.

D.5. MINUTES - REGULAR MEETING OF AUGUST 25, 2015 (See A.5)

**Recommendation:** Approve as submitted.

**E. PUBLIC HEARINGS - NONE**

**F. ITEMS REMOVED FROM CONSENT CALENDARS FOR DISCUSSION OR SEPARATE ACTION**

F.1. DIRECT STAFF TO RELEASE THE REQUEST FOR PROPOSALS FOR DESIGN SERVICES FOR MORENO VALLEY UTILITY CAPITAL PROJECTS AS SOON AS POSSIBLE (Report of: Financial & Management Services)

Mayor Molina opened the agenda item for public comments, which were received from: Roy Bleckert, Pete Bleckert, Tom Jerele Sr., and Chris Baca.

**Recommendation:**

1. Direct staff to release the Request for Proposals for Design Services for Moreno Valley Utility (MVU) Capital Projects as soon as possible.

<b>RESULT:</b>	<b>APPROVED [4 TO 1]</b>
<b>MOVER:</b>	Jeffrey J. Giba, Council Member
<b>SECONDER:</b>	George E. Price, Council Member
<b>AYES:</b>	Dr. Yxstian A. Gutierrez, Jeffrey J. Giba, D. LaDonna Jempson, George E. Price
<b>NAYS:</b>	Jesse L. Molina

F.2. PAYMENT REGISTER - JULY 2015 (Report of: Financial & Management Services)

Mayor Molina opened the agenda item for public comments; there being none, public comments were closed.

**Recommendation:**

1. Receive and file the Payment Register.

<b>RESULT:</b>	<b>APPROVED [4 TO 1]</b>
<b>MOVER:</b>	Jeffrey J. Giba, Council Member
<b>SECONDER:</b>	D. LaDonna Jempson, Council Member
<b>AYES:</b>	Dr. Yxstian A. Gutierrez, Jeffrey J. Giba, D. LaDonna Jempson, George E. Price
<b>NAYS:</b>	Jesse L. Molina

**G. REPORTS**

**G.1. CITY COUNCIL REPORTS ON REGIONAL ACTIVITIES**

March Joint Powers Commission (JPC)

Mayor Pro Tem Dr. Gutierrez provided an update from the September 2 Commission meeting. The JPA's new office will be on the lower floor of the Western Municipal Water District building. The Commission meeting dates / times are changing with the move, which will likely occur in January.

Mayor Pro Tem Dr. Gutierrez also reported on the update on the JPA planning activities. There's a lot going on!

- They reported a total of 3,140 jobs created so far,
- Moreno Valley March Field Metrolink Station construction is coming along,
- Heacock Channel reconstruction is expected to go out to bid next Spring,
- US Vets will start grading in October for Phase I of their project,
- A 700,000 sq ft distribution facility is proposed along on the east side of I-215 between Cactus and Alessandro. It will be coming to the JPC for approval in December or January
- Hillwood is planning aviation uses and a 20,000 sq ft hangar east of the joint use runway, and
- Lewis will be submitting a draft proposal for the golf course redevelopment in the next 2 - 3 weeks.

Minutes Acceptance: Minutes of Sep 8, 2015 6:00 PM (CONSENT CALENDAR-CITY COUNCIL)

Riverside County Habitat Conservation Agency (RCHCA)

Council Member Price reported that Carol Sims was retiring and would like a proclamation for her years of service be prepared.

Riverside County Transportation Commission (RCTC)

The Executive Board meeting was dark in August, so no items to report at this time. A meeting would be held on September 9.

Riverside Transit Agency (RTA)

The Board of Directors Meeting was dark in August, so no items to report at this time.

Western Riverside Council of Governments (WRCOG)

Council Member Giba reported on SCAG that he had been putting out a newsletter. Encouraged the public to contact Shanna Palau to get on his mailing list.

Western Riverside County Regional Conservation Authority (RCA) - No report

School District/City Joint Task Force - No report

Mayor Molina opened the agenda item for public comments, which were received from Tom Jerele, Sr.

G.2. APPROVAL OF RESOURCE ADEQUACY PROGRAM UPDATES FOR FISCAL YEAR 2015/2016 (Report of: Financial & Management Services)

Mayor Molina opened the agenda item for public comments; there being none, public comments were closed.

**Recommendation: That the City Council:**

1. Approve the Resource Adequacy Program updates for Fiscal Year 2015/2016

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Jeffrey J. Giba, Council Member
<b>SECONDER:</b>	Dr. Yxstian A. Gutierrez, Mayor Pro Tem
<b>AYES:</b>	Molina, Gutierrez, Giba, Jempson, Price

G.3. 1649: TRAVEL AND RELATED BUSINESS EXPENSES (ELECTED OFFICIALS) POLICY 3.20 REVISION (CONT' FROM JUNE 23, 2 (Report of: City Clerk)

Minutes Acceptance: Minutes of Sep 8, 2015 6:00 PM (CONSENT CALENDAR-CITY COUNCIL)



Mayor Molina opened the agenda item for public comments, which were received from Chris Baca and Louise Palomarez.

**Recommendation: That the City Council:**

- 1. Update the Travel and Related Business Expenses Policy to reflect minor housekeeping items as provided by Administrative Services/Purchasing Division; and
- 2. Consider addition of provision requiring reimbursement of City’s costs due to unexcused absence and take such action as deemed appropriate by the City Council.

Motion to Update the Travel and Related Business Expenses Policy to reflect minor housekeeping items as provided by Administrative Services/Purchasing Division.

<b>RESULT:</b>	<b>APPROVED [4 TO 1]</b>
<b>MOVER:</b>	Jeffrey J. Giba, Council Member
<b>SECONDER:</b>	Dr. Yxstian A. Gutierrez, Mayor Pro Tem
<b>AYES:</b>	Jesse L. Molina, Dr. Yxstian A. Gutierrez, Jeffrey J. Giba, D. LaDonna Jempson
<b>NAYS:</b>	George E. Price

**G.4. APPROVE THE REVISED MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MORENO VALLEY AND THE MORENO VALLEY MANAGEMENT ASSOCIATION (Report of: Administrative Services)**

Mayor Molina opened the agenda item for public comments, there being none, public comments were closed.

**Recommendations: That the City Council:**

- 1. Approve the revised Memorandum of Understanding (MOU) between the City of Moreno Valley and the Moreno Valley Management Association (MVMA) which includes language establishing an “agency shop” agreement but leaves all previously agreed upon terms, conditions and language intact.
- 2. Authorize the City Manager to sign the agreement.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Jeffrey J. Giba, Council Member
<b>SECONDER:</b>	George E. Price, Council Member
<b>AYES:</b>	Molina, Gutierrez, Giba, Jempson, Price

**G.5. JULY 4TH ADVISORY BOARD OPTIONS (Report of: Parks & Community Services)**

Minutes Acceptance: Minutes of Sep 8, 2015 6:00 PM (CONSENT CALENDAR-CITY COUNCIL)

Mayor Molina opened the agenda item for public comments, which were received from Chris Baca and Bob Palomarez.

**Recommendations: That the City Council:**

1. Consider options for the July 4<sup>th</sup> Advisory Board and determine whether to maintain the Board as created by Municipal Code Chapter 2.64.

Motion to approve Alternative No. 1 to disband the July 4th Board.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Jesse L. Molina, Mayor
<b>SECONDER:</b>	George E. Price, Council Member
<b>AYES:</b>	Molina, Gutierrez, Giba, Jempson, Price

**G.6. CITY MANAGER'S REPORT**

None

**G.7. CITY ATTORNEY'S REPORT**

None

**H. LEGISLATIVE ACTIONS**

**H.1. ORDINANCES - 1ST READING AND INTRODUCTION - NONE**

**H.2. ORDINANCES - 2ND READING AND ADOPTION**

H.2.1. ADOPT ORDINANCE 902. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, ADDING CHAPTER 8.40 TO TITLE 8 OF THE CITY OF MORENO VALLEY MUNICIPAL CODE ESTABLISHING THE EXPEDITED PERMITTING PROCEDURE FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS (RECEIVED INTRODUCTION AND FIRST READING ON AUGUST 25, 2015 BY A 4-0-1 VOTE, MOLINA ABSENT) (Report of: Community Development)

Mayor Molina opened the agenda item for public comments, which were received from Tom Jerele, Sr.

**Recommendation: That the City Council:**

1. Adopt Ordinance No. 902. An Ordinance of the City Council of the City of Moreno Valley, California, Adding Chapter 8.40 to Title 8 of the City of Moreno Valley Municipal Code Establishing the Expedited Permitting Procedure for Small Residential Rooftop Solar Systems.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Jeffrey J. Giba, Council Member
<b>SECONDER:</b>	George E. Price, Council Member
<b>AYES:</b>	Molina, Gutierrez, Giba, Jempson, Price

### H.3. ORDINANCES - URGENCY ORDINANCES - NONE

### H.4. RESOLUTIONS - NONE

#### **CLOSING COMMENTS AND/OR REPORTS OF THE CITY COUNCIL, COMMUNITY SERVICES DISTRICT, CITY AS SUCCESSOR AGENCY FOR THE COMMUNITY REDEVELOPMENT AGENCY OR HOUSING AUTHORITY**

##### Council Member Giba

Encouraged the public to attend the Town Hall meeting on the Moreno Valley Utilities Projects and Financing on September 16, 2015. It is very important.

Suggested that Rick Bishop, WRCOG representative give a presentation on the Hero program; and also Lorie Stone, March JPA Executive Director give a presentation on March Joint Powers

Southern California Association of Governments personnel gives a report on regional components that help our city function.

Many projects are triggered by need as the World Logistic Center

Complimented Mayor for working with RCTC on not losing funding on the 60 freeway.

Thanked staff for all the hard work for the community.

##### Mayor Pro Tem Dr. Gutierrez

Requested that staff follow up with Tom Jerele's request regarding March JPA.

Reported that the City's Youthfest is coming up this Saturday at Frederick Park.

##### Council Member Jempson

Explained that her vote was based on studying materials on the World Logistic Center and was questioned on how she was going to vote. She stressed that she wanted to be as neutral as possible by not answering the question prematurely. She further elaborated that she was not comfortable with answers given by the developer at the Public Hearing. After the vote was done, she was further questioned regarding her vote on the World Logistic Center.

Spoke about respect, disrespect and the need to work together.

##### Council Member Price

Concurred with Council Member Jempson's comments.

Commented on working together

Reported that the World Logistic Center is out of their hands, move on to other things  
Moreno Valley Ranch golf course has closed and they have postponed three options.

Lot of phone calls from people living on the golf course; especially concerned with vandalism on the golf course; police being called on a regular basis in that area.

Thanked several residents that contacted him over the weekend, irrigation issues  
 Upcoming meeting on flooding issues  
 Thanked everyone for prayers and condolences for his brother a firefighter.

### Mayor Molina

Thanked staff for their diligent work the past few weeks. The Mayor stated that the City had gone through hard times together.  
 Mayor Molina complimented Economic Development Director Mike Lee and Community Development Director Allen Brock for their hard work in bringing business into the City. He has concerns with flooding in his district  
 Thanked new interim city attorney; new thoughts brought to the table  
 Need to quit attacking each other; let's everyone speak  
 Is a kind person and everyone needs to love each other as their neighbor  
 Thanked the public for being present at the Council meeting.

### **ADJOURNMENT**

There being no further business, the September 8, 2015 Regular Meeting was adjourned at 8:47p.m.

Submitted by:

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Jane Halstead, City Clerk, CMC  
 Secretary, Moreno Valley Community Services District  
 Secretary, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley  
 Secretary, Moreno Valley Housing Authority  
 Secretary, Board of Library Trustees

Approved by:

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Jesse L. Molina, Mayor  
 President, Moreno Valley Community Services District  
 Chairperson, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley  
 Chairperson, Moreno Valley Housing Authority  
 Chairperson, Board of Library Trustees



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Ahmad R. Ansari, P.E., Public Works Director/City Engineer

**AGENDA DATE:** September 22, 2015

**TITLE:** APPROVAL OF CONSTRUCTION CONTRACT CHANGE ORDER FOR THE DUNLAVY COURT STORM DAMAGE REPAIRS PROJECT NO. 804 0006 70 77

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### **RECOMMENDED ACTION**

#### **Recommendations:**

1. Approve the appropriation of \$400,000 to fund Dunlavy Court Storm Damage Repairs from the General Fund (Account No. 1010-70-77-80004-720199).
2. Award a construction contract change order (CCCO) for the Dunlavy Court Storm Damage Repairs to Mamco, Inc. dba Alabbasi, 764 W. Ramona Expressway, Suite C, Perris, CA 92571, the lowest responsible bidder, for the East Sunnymead Boulevard Storm Drain Improvements project.
3. Authorize the Public Works Director/City Engineer to execute the CCCO with Mamco, Inc. dba Alabbasi.
4. Authorize the issuance of a Purchase Order Amendment to Mamco, Inc. dba Alabbasi for the amount of \$359,892 (\$299,910 bid amount plus 20% contingency) when the CCCO has been signed by all parties.
5. Authorize the Public Works Director/City Engineer to execute any subsequent related minor change orders to the CCCO with Mamco, Inc. dba Alabbasi up to, but not exceeding, the 20% contingency amount of \$59,982, subject to the approval of the City Attorney.

### **SUMMARY**

This report recommends approval of a CCCO with Mamco, Inc. dba Alabbasi for the Dunlavy Court Storm Damage Repairs. The work will be done on affected properties

north of Dunlavy Court between Indian Street and Hubbard Street. These properties were affected by the rushing flood waters that overwhelmed the normal drainage path along Hubbard Street due to the intense storm event on the afternoon of July 19, 2015. The project is funded with General Fund monies.

**DISCUSSION**

On May 12, 2015, the City Council awarded a construction contract and authorized the issuance of a Purchase Order in the amount of \$977,680 to Mamco, Inc. dba Alabbasi as the lowest responsible bidder for the East Sunnymead Boulevard Storm Drain project. This project includes the installation of two parallel underground storm drain lines in north side of Sunnymead Boulevard, between Indian Street and SR-60/Perris Boulevard Eastbound Off-Ramp, which are to be connected to an existing concrete open channel at the southeast corner of Sunnymead Boulevard and Indian Street.

On July 19, 2015, the area north of the State Route 60 Freeway roughly between Pigeon Pass Road and Perris Boulevard was hit hard by an intense rain storm event lasting 45 minutes. A rain gauge near the Pigeon Pass dam recorded 1.5 inches within the 45 minute period. Several properties located north of Dunlavy Court between Indian Street and Hubbard Street were affected by flood waters.

On September 10, 2015, the City received CCCO proposals for the Dunlavy Court Storm Damage Repairs from two of the four contractors that are currently working on City capital improvement projects throughout the City. These contractors were all awarded contracts by the City Council as a result of them being the lowest responsible bidders on their respective projects. As required for any public works projects, these contractors have fully executed City contracts, bonds and insurance in place and are qualified to do the job. These contractors are familiar with City construction standards and requirements as well as have workers and equipment in town to quickly and efficiently mobilize to get started with the repairs preferably before the next storm event.

The two CCCO proposals received are as follows:

<u>CONTRACTORS</u>	<u>CCCO Amount</u>
1. <b>Mamco, Inc. dba Alabbasi</b> .....	\$299,910
2. Hillcrest Contracting .....	\$376,260

The City did solicit pricing from Vance Corporation and Griffith Company but they decided not to submit a cost proposal.

Staff is recommending issuance of a Purchase Order Amendment to Mamco, Inc. dba Alabbasi for \$359,892 which includes a 20% contingency due to the unknown nature of the extent of damage that is concealed by buried silt and voids that must be excavated sufficiently in order to be repaired and restored to its original condition. There also may

be other conflicting appurtenances that will have to be addressed during trenching and installation of the storm drain and manholes. The work is anticipated to be completed within 30 to 40 working days from the City’s issuance of the Notice to Proceed to the contractor.

**ALTERNATIVES**

1. Approve and authorize the recommended actions as presented in this staff report. *This alternative will provide for the timely repairs as well as well as construction of concrete swales and storm drain that will provide for a more effective conveyance of storm flows minimizing the risk of damage in the future.*
2. Do not approve and authorize the recommended actions as presented in this staff report. *This alternative will result in delaying the timely construction of the repairs and significant community concerns over potential future flooding.*

**FISCAL IMPACT**

**This project is fully funded by General Fund monies.** The requested funding will cover the contractor’s cost to perform the repairs, geotechnical testing, survey work and City staff cost in rendering project/construction management and inspection services.

Appropriations/Budget Adjustments

Fund	Account No.	Type (Rev/Exp)	FY 15/16 Budget	Proposed Adjustments	FY 15/16 Amended Budget
Gen. Fund	1010-70-77-80004-720199 (Project 804 0006 70 77)	Exp	\$0	\$400,000	\$400,000

AVAILABLE BUDGET - FISCAL YEAR 2015/2016:

General Fund	
(Account No. 1010-70-77-80004-720199).....	<u>\$400,000</u>
<b>Total.....</b>	<b><u>\$400,000</u></b>

ESTIMATED PROJECT-RELATED COSTS:

Construction (includes 20% contingency) .....	\$359,900
Construction Surveying and Geotechnical Services.....	\$ 20,100
Project Management, Construction Administration and Inspection* .....	<u>\$ 20,000</u>
Total .....	<u>\$400,000</u>

\* City staff will provide these services plus printing and other miscellaneous costs.

ANTICIPATED PROJECT SCHEDULE:

Construction ..... October/November 2015

**NOTIFICATION**

Prior to construction starting, all utilities and adjacent property owners as well as law enforcement, fire department and other emergency services responders will be notified of the construction

**PREPARATION OF STAFF REPORT**

Prepared By:  
Prem Kumar, P.E.  
Deputy Public Works Director/Assistant City Engineer

Department Head Approval:  
Ahmad R. Ansari, P.E.  
Public Works Director/City Engineer

**CITY COUNCIL GOALS**

**Public Safety.** Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

**Public Facilities and Capital Projects.** Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

**Positive Environment.** Create a positive environment for the development of Moreno Valley's future.

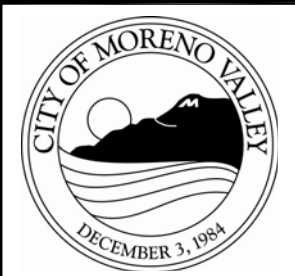
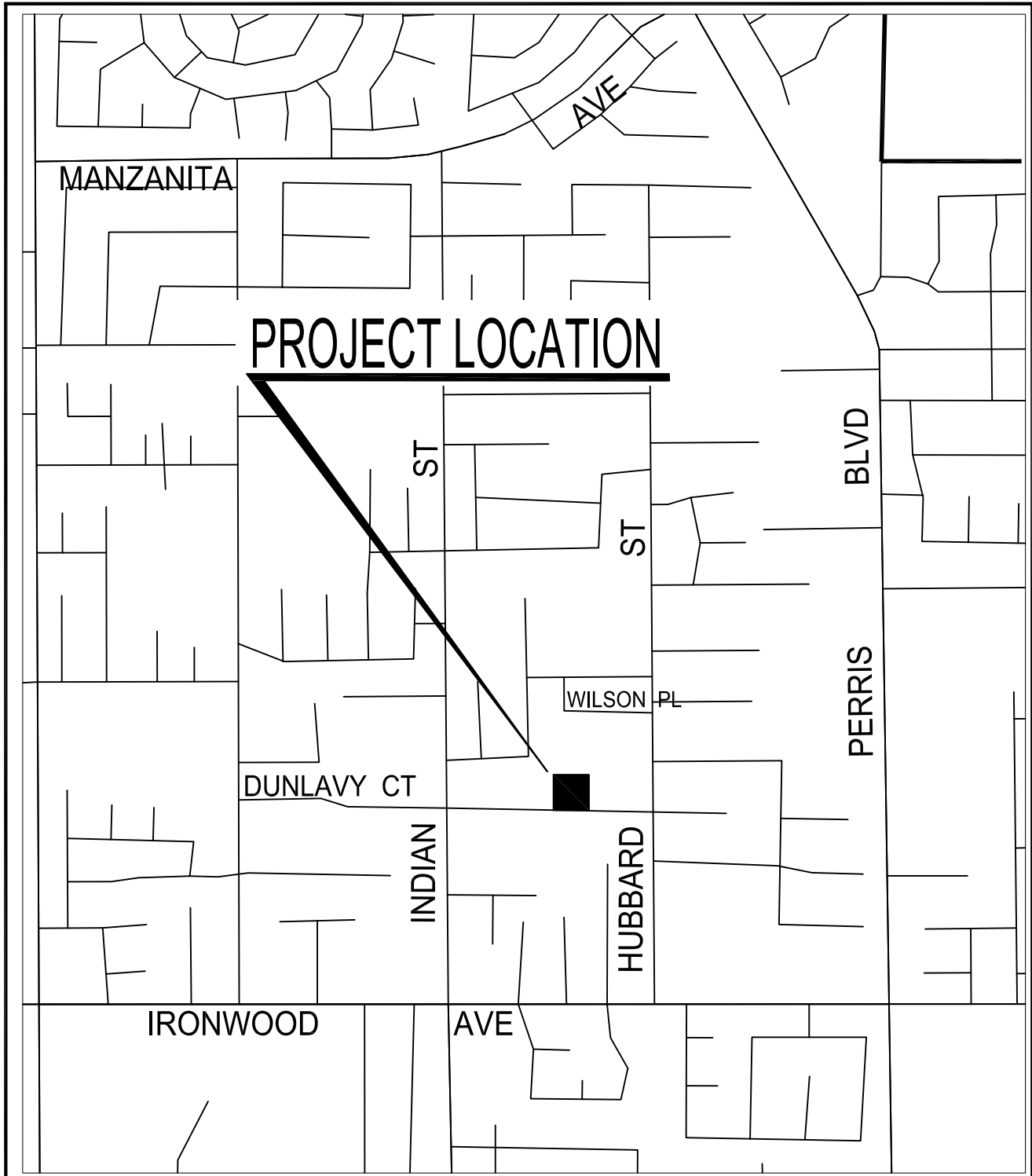
**ATTACHMENTS**

- 1. Dunlavy Location Map
- 2. Alabbasi CCO No.3

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/14/15 5:24 PM
City Attorney Approval	<u>✓ Approved</u>	9/16/15 9:08 AM
City Manager Approval	<u>✓ Approved</u>	9/16/15 11:41 AM





**LOCATION MAP**

Public Works Department  
Capital Projects Division

**DUNLAVY COURT**  
STORM DAMAGE REPAIRS

Attachment: Dunlavy Location Map (1658 : APPROVAL OF CONSTRUCTION CONTRACT CHANGE ORDER FOR THE DUNLAVY COURT STORM



**CITY OF MORENO VALLEY  
PUBLIC WORKS DEPARTMENT  
Capital Projects Division**

**CONTRACT CHANGE ORDER NO. 3**

PROJECT NO.: **804 0006 70 77**

DESCRIPTION: **Dunlavy Court Storm Damage Repairs as Added Work to the East Sunnymead Boulevard Storm Drain Improvements from Indian Street to SR-60/Perris Boulevard Eastbound Off-Ramp Project**

TO: **Mamco, Inc. dba Alabbasi**

You are hereby requested to comply with the following changes from the Contract Plans and Specifications:

<b>SUMMARY OF CHANGES</b>		
Description (Detailed Explanation Attached)		Change in Contract Price <sup>1</sup>
1.	Dunlavy Court Neighborhood Block Wall Repairs and Drainage Improvements per Attached Detailed Cost Proposal Schedule	\$299,910.00
<b>Net Change in Contract Price</b>		<b>\$299,910.00</b>

<sup>1</sup> Deduction or decrease in Contract Price is denoted in parenthesis.

The following change is hereby made a part of the Contract Documents and shall be performed under the same terms and conditions as required by the original Contract Documents. Except as modified herein, the original Contract Documents and all prior amendments shall remain in full force and effect and all of the terms of the Contract Documents are hereby incorporated in this Change Order.

**SUMMARY OF ALL CHANGE ORDERS**

ORIGINAL CONTRACT AMOUNT (Project No. 804 0006 70 77)	\$888,800.00
CCO1 .....	\$34,751.81
CCO2 .....	\$6,234.76
CCO3 .....	\$299,910.00
<b>TOTAL.....</b>	<b>\$1,229,696.57</b>

**SUMMARY OF CONTRACT TIME**

FIRST DAY OF CONTRACT: .....	July 1, 2015
WORKING DAYS: .....	90
TIME EXTENSION:	
CCO1 .....	6
CCO2 .....	0
CCO3 .....	30
LAST DAY OF WORK: .....	January 4, 2016

Attachment: Alabbasi CCO No.3 (1658 : APPROVAL OF CONSTRUCTION CONTRACT CHANGE ORDER FOR THE DUNLAVY COURT STORM

### CHANGE ORDER DETAIL

Change Order No.: 3  
 Project No.: 804 0006 70 77  
 Description: **Dunlavy Court Storm Damage Repairs as Added Work to the East Sunnymead Boulevard Storm Drain Improvements from Indian Street to SR-60/Perris Boulevard Eastbound Off-Ramp Project**

The changes or interpretations described and noted herein are hereby authorized. The signed original of this order is on file in the Department of Public Works. Shown as separate paragraphs: (A) Reason for Change; (B) Description of Change; (C) Change in Contract Costs; and (D) Change in Completion Date.

**Item No. 1: Dunlavy Court Neighborhood Block Wall Repairs and Drainage Improvements per Attached Detailed Cost Proposal Schedule**

A. Reason for Change:

The recent flooding that occurred within the Dunlavy Court Neighborhood has created damages to private properties including undermined block wall, damaged fences, erosion, and deposits of debris and sediments around several houses in the neighborhood. The City has proposed to repair the damaged wall/fences and to install a storm drain with inlets and conveying channels to collect storm waters from area behind the houses and discharge to the existing storm drain in Dunlavy Court. Miscellaneous storm cleanup and other repairs are also included in this scope of work. A detailed Cost Proposal Schedule is attached herein for reference.

B. Description of Change:

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE	BID OR CURRENT APPROVED QTY	FINAL QTY	CHANGE	CHANGE IN COST 1
New Item	Dunlavy Court Neighborhood Block Wall Repairs and Drainage Improvements per Attached Detailed Cost Proposal Schedule	LS	\$299,910.00	0	1	1	\$299,910.00
<b>Total</b>							<b>\$299,910.00</b>

<sup>1</sup> Deduction or decrease in Contract Price is denoted in parenthesis.

C. Change in Contract Cost:  
 Increase to the Contract Amount by \$299,910.00.

D. Change in Completion Date:  
 Add thirty (30) working days to the Contract Time.

**SIGNATURE PAGE TO FOLLOW:**

Attachment: Alabbasi CCO No.3 (1658 : APPROVAL OF CONSTRUCTION CONTRACT CHANGE ORDER FOR THE DUNLAVY COURT STORM

The original Contract Price was Eight Hundred Eighty Eight Thousand Eight Hundred and 00/100 Dollars (\$888,800.00). Contract Change Order No. 1 increased the contract price by Thirty Four Thousand Seven Hundred Fifty One and 81/100 Dollars (\$34,751.81). Change Order No. 2 increased the contract price by Six Thousand Two Hundred Thirty Four & 76/100 (\$6,234.76). This Change Order No. 3 increases the contract price by Two Hundred Ninety Nine Thousand Nine Hundred Ten and 00/100 Dollars (\$299,910.00). The new Contract Price will be One Million Two Hundred Twenty Nine Thousand Six Hundred Ninety Six and 57/100 Dollars (\$1,229,696.57), resulting in an increase of approximately 38.35% to the original Contract.

The original contract period of Ninety (90) Working Days was extended by Change Order No. 1 by six (6) working days. No change in Working Days for Contract Change Order No.2. This Contract Change Order No. 3 extends the contract time by thirty (30) working days.

Ordered: \_\_\_\_\_ Date: \_\_\_\_\_  
Ahmad R. Ansari, P.E.  
Public Works Director/City Engineer

Concurred by: \_\_\_\_\_ Date: \_\_\_\_\_  
Prem Kumar, P.E.  
Deputy Public Works Director/Assistant City Engineer

Concurred by: \_\_\_\_\_ Date: \_\_\_\_\_  
Quang Nguyen  
Senior Engineer, P.E.

Acceptance by Contractor:

This Change Order is in full compromise and settlement of all adjustments to Contract Time and Contract Price, and compensation for any and all delay, extended or additional field and home office overhead, disruption, acceleration, inefficiencies, lost labor or equipment productivity, differing site conditions, construction interferences and other extraordinary or consequential damages (hereinafter called "Impacts"), including any ripple or cumulative effect of said Impacts on the overall Work under the Contract arising directly or indirectly from the performance of Work described in this Change Order. By execution of this Change Order, Contractor agrees that this Change Order constitutes a complete accord and satisfaction with respect to all claims for schedule extension, Impacts, or any costs of any nature, character or kind arising out of or incidental to this Change Order.

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

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

TEL: 951.413.3100  
WWW.MOVAL.ORG



14177 FREDERICK STR  
P.O. BOX 880  
MORENO VALLEY, CA 92552-0880

September 9, 2015

EMAIL/U.S.MAIL

Mr. Rumzi Alabbasi  
Mamco, Inc. dba Alabbasi Construction  
16810 Van Buren Blvd. Suite 200  
Riverside, CA 92504

Subject: Requesting the Submittal of the Contractor's Change Order Proposal for  
Dunlavy Court Neighborhood Block Wall Repairs and Drainage Improvements

Dear Mr. Alabbasi:

The City is requesting the submittal of the Change Order Proposal from you company for the Dunlavy Court Neighborhood Block Wall Repairs and Drainage Improvements. The scope of work is depicted in the enclosed Bid/Proposal Schedule, Plans and Technical Provisions. The deadline for submitting your proposal is **September 10, 2015 at 2:00 p.m.** You can email your proposal to me at: [quangn@moval.org](mailto:quangn@moval.org).

We look forward to receive your proposal. If you have any questions, please contact me at 951.413.3159.

Sincerely,

Quang Nguyen  
Senior Engineer, P.E.

Enclosures: Bid/Proposal Schedule and Technical Provisions  
Construction Plans (two sheets)  
Applicable Standard Drawings

c: Project File

W:\\_STAFF\QuangN\Flooding Photos\Dunlavy-Wilson\Letter.Request.COP\_9-10-15.doc

City of Moreno Valley

**CONTRACTOR'S CHANGE ORDER PROPOSAL (Addendum No. 1)****Dunlavy Court Neighborhood Block Wall Repairs and Drainage Improvements****Proposal Deadline: September 10, 2015 at 2:00 p.m.****Contract Time: 30 Working Days**Name of Contractor Mamco, Inc. dba Alabbasi

ITEM NO.	CODE	DESCRIPTION OF ITEMS	ESTIMATED QUANTITY		UNIT PRICE (FIGURES)	TOTAL PRICE (FIGURES)
1.		Mobilization and traffic control	%	LS	13,000	13,000
2.		Clearing, grubbing and removal, including removal of unsuitable/loose soil underneath existing block wall and downdrain/browditch for 2-sack slurry fill	1	LS	12,000	12,000
3.		Sawcut, remove and dispose existing block wall and downdrain/browditch	125	LF	30-	3,750
4.		Temporarily remove existing metal cluster mailboxes for construction and reinstall them back in place after construction	2	EA	650	1,300
5.		Sawcut and remove PCC sidewalk and cluster mailbox pad	130	SF	4-	520
6.		Sawcut and remove PCC curb and gutter	15	LF	18-	270
7.		Sawcut and remove AC pavement and base materials	400	SF	3-	1,200
8.		Remove wooden fence for construction	200	LF	10-	2,000
9.		Furnish and install temporary fencing during construction to protect open trench as well as keeping pets in place	%	LS	3,500	3,500
10.	S	Relocate Verizon riser box and conduit, including coordination with Verizon for relocation and all other utilities that may be affected.	1	LS	2,000	2,000
11.		Sawcut and remove existing block planter and soil	15	LF	30-	450
12.		Remove existing pine tree	1	EA	1,000	1,000
13.		Trench safety system/shoring and bracing	%	LS	2,000	2,000
14.		Construct 30" RCP (D=1250)	235	LF	180	42,300
15.		Construct Junction Structure No. 2 per RCFC&WCD Std. JS227	1	EA	4,500	4,500
16.		Construct Type "X" inlet per RCFC & WCD Std. CB108 with removable cone grate trash rack	2	EA	6,800	13,600
17.		Construct 6" thick PCC trapezoidal channel per Detail "D" as shown on plan	415	LF	125	51,875



18.		Construct PCC downdrain/browditch as shown on plan	125	LF	40-	5,000
19.		Construct block wall and footing per City standards as shown on plans	125	LF	150-	18,750
20.		Construct 2-sack concrete slurry fill underneath existing block wall and drowndrain/browditch	400	CY	80	32,000
21.		Fill, compact and re-grade backyards and sideyards around the houses in Lot Nos. 22, 23 and 24 per the attached Tract 31919 Precise Grading Plan, and areas within the vacant lot adjacent proposed trapezoidal channel as shown on Plans	1	LS	33,000	33,000
22.	S	Furnish and plant 30-galon replacement tree at location specify by the property owner	1	EA	1,500	1,500
23.	S	Construct wooden fence to match existing	220	LF	50-	11,000
24.		Construct block planter to match existing, including fill the planter with topsoil to top	15	LF	100	1,500
25.		Construct PCC curb and gutter	15	LF	40 -	600
26.		Construct 4" thick PCC sidewalk and mailbox pad	130	SF	6 -	780
27.		Construct AC and AB pavement section to match existing structural pavement section thickness (0.25' AC over 0.50' AB) plus 1 inch	400	SF	22 -	8,800
28.		Construct 6" concrete slab with 6"x6" -1.4x1.4 mesh in center	1,050	SF	6.50	6,825
29.	S	Restore landscape and irrigation lines and sprinkler heads in-kind to match existing	1	LS	6,500	6,500
30.		Furnish and install fiber roll per CASQA Std. SE-5	800	LF	3.50	2,800
31.		Furnish and install 12" depth of natural 6" rock rip-rap	130	SF	18 -	2,340
32.		Remove and replace PCC walkway and slough wall within the house in Lot No. 23, including reinstalling/resetting yard drain inlet	90	SF	25 -	2,250
33.		Perform clean-up and removal of debris, trash, and sediments deposited by flooding waters within Lot Nos. 22, 23, 24 and 25.	1	LS	11,000	11,000
<b>TOTAL</b> (For Items 1 to 33)						<b>299,910</b>

Date 9/10/15

Signed 

Name Rumzi Alabbasi

Title Vice President



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Chris Paxton, Administrative Services Director

**AGENDA DATE:** September 22, 2015

**TITLE:** LIST OF PERSONNEL CHANGES

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### **RECOMMENDED ACTION**

#### **Recommendation:**

1. Ratify the list of personnel changes as described.

### **DISCUSSION**

The attached list of personnel changes scheduled since the last City Council meeting are presented for City Council ratification.

### **FISCAL IMPACT**

All position changes are consistent with appropriations previously approved by the City Council.

### **PREPARATION OF STAFF REPORT**

Prepared By:  
Chris Paxton  
Administrative Services Director

Department Head Approval:  
Chris Paxton  
Administrative Services Director

### **CITY COUNCIL GOALS**

None

### **ATTACHMENTS**

1. List of Personnel Changes

### **APPROVALS**



Budget Officer Approval	<u>✓ Approved</u>	9/14/15 1:10 PM
City Attorney Approval	<u>✓ Approved</u>	9/15/15 2:09 PM
City Manager Approval	<u>✓ Approved</u>	9/15/15 2:12 PM

## City of Moreno Valley Personnel Changes

### New Hires

Michael McLellan, Electric Utility Program Coordinator, Public Works Department

### Promotions

Leticia Jimenez, Temp Laborer, Parks & Community Services Department

To: Lead Parks Maintenance Worker, Parks & Community Services Department

### Transfers

None

### Separations

None



## **Report to City Council**

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**TO:** Mayor and City Council

**FROM:** Ahmad R. Ansari, P.E., Public Works Director/City Engineer

**AGENDA DATE:** September 22, 2015

**TITLE:** PA05-0054 (PM 33637) – APPROVE PARCEL MAP 33637 LOCATED ON THE SOUTH SIDE OF IRONWOOD AVENUE BETWEEN WELLER PLACE AND KILGORE STREET. OWNER – ROSE RIOS.

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### **RECOMMENDED ACTION**

#### **Recommendations:**

1. Approve Parcel Map 33637 for PA05-0054.
2. Authorize the City Clerk to sign the map and transmit said map to the County Recorder's Office for recordation.

### **SUMMARY**

This report recommends approval of Parcel Map 33637, owned by Rose Rios. The project is located on the south side of Ironwood, between Weller Place and Kilgore Street.

### **DISCUSSION**

On April 27, 2006, the Planning Commission of the City of Moreno Valley approved Tentative Parcel Map 33637 (PA05-0054). The project proposes to divide an approximately one acre site into four (4) parcels for single family residential use. No public improvements are associated with the project. The developer is not required to enter into a Public Improvement Agreement with the City. Therefore, only the parcel map requires approval for recordation purposes.

Parcel Map No. 33637 is in substantial conformance with the approved tentative map. The Conditions of Approval have been met for map recordation. The developer has requested that the map be approved for recordation.

## **ENVIRONMENTAL**

Planning staff, as typical with all planning projects, has reviewed the request in accordance with the latest edition of the California Environmental Quality Act (CEQA) Guidelines and has determined the project will not result in any significant effect on the environment and qualifies for an exemption under the provisions of CEQA as a Class 15 Categorical Exemption, CEQA Guidelines, Section 15315 Minor Land Divisions.

## **ALTERNATIVES**

1. Approve and authorize the recommended actions as presented in this staff report. *This alternative will allow the project to move forward with development of four single family dwelling units within the site.*
2. Do not approve and authorize the recommended actions as presented in this staff report. *This alternative will not allow the owner to subdivide the site into four parcels in order to build four single family dwelling units.*

## **FISCAL IMPACT**

No fiscal impact is anticipated.

## **CITY COUNCIL GOALS**

### **PUBLIC FACILITIES AND CAPITAL PROJECTS:**

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

## **NOTIFICATION**

Publication of agenda.

## **PREPARATION OF STAFF REPORT**

Prepared By:  
Hoang Nguyen  
Associate Engineer

Department Head Approval:  
Ahmad R. Ansari, P.E.  
Public Works Director/City Engineer

Concurred By:  
Henry Ngo, P.E.  
Interim Engineering Division Manager

## **CITY COUNCIL GOALS**

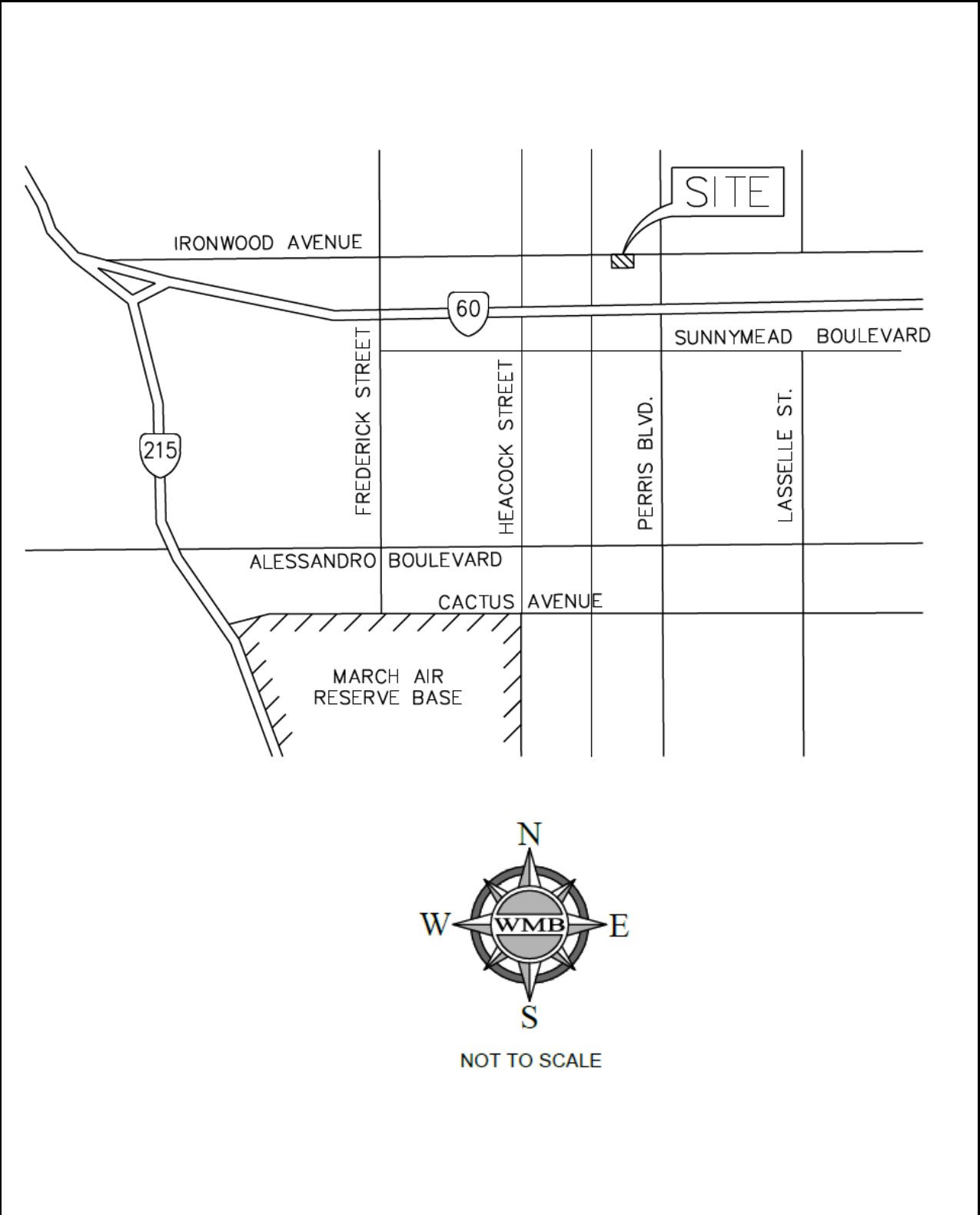
None

**ATTACHMENTS**

- 1. Vicinity Map - PA05-0054

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/11/15 9:48 AM
City Attorney Approval	<u>✓ Approved</u>	9/15/15 11:48 AM
City Manager Approval	<u>✓ Approved</u>	9/15/15 2:06 PM



CITY OF MORENO VALLEY  
 PUBLIC WORKS DEPARTMENT - LAND DEVELOPMENT

PA05-0054 (PM 33637)

Attachment: Vicinity Map - PA05-0054 (1614 : PA05-0054 (PM 33637) ? APPROVE PARCEL MAP 33637 LOCATED ON THE SOUTH SIDE OF



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Richard Teichert, Chief Financial Officer

**AGENDA DATE:** September 22, 2015

**TITLE:** RESOLUTION OF THE CITY OF MORENO VALLEY SERVING AS THE SUCCESSOR AGENCY FOR THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE PERIOD OF JANUARY 1, 2016 THROUGH JUNE 30, 2016 (ROPS 15-16 B)

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### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council as Successor Agency:**

1. Adopt Resolution No. SA 2015-02. A Resolution of the City Council of the City of Moreno Valley, California, Serving as Successor Agency to the Community Redevelopment Agency of the City of Moreno Valley Approving the Recognized Obligation Payment Schedule and Administrative Budget for the Period of January 1, 2016 through June 30, 2016 (ROPS 15-16 B), and Authorizing the City Manager acting for the Successor Agency or her Designee to Make Modifications Thereto.
2. Authorize the City Manager acting for the Successor Agency or her Designee to make modifications to the Schedule.
3. Authorize the transmittal of the ROPS 15-16 B, for the period of January 1, 2016 through June 30, 2016, including Administrative Budget for the said period, ("Exhibit A") to the Oversight Board for review and approval.

### **SUMMARY**

This report recommends adoption of the Proposed Resolution approving a Recognized Obligation Payment Schedule (ROPS 15-16 B), including the Administrative Budget, for the period of January 1, 2016 through June 30, 2016.

As successor agency ("Successor Agency") to the Community Redevelopment Agency (RDA) of the City of Moreno Valley, the City is responsible for winding down the affairs of the former RDA including disposing of its assets, making payments and performing other obligations owed for Enforceable Obligations. The Recognized Obligation Payment Schedules certain applicable periods provide the details necessary for the City serving as the Successor Agency to fulfill the former RDA's legally binding and enforceable agreements as required by law.

## **DISCUSSION**

ABX1 26 requires the Successor Agency to approve a Recognized Obligation Payment Schedule ("ROPS") for each six-month period. The required content of the ROPS, set forth in Health and Safety Code Section 34177(l)(1), details all of the Successor Agency's legally binding and enforceable obligations, anticipated payments, and sources of payments. Recognized obligations include bonds, loans, judgments, settlements, any legally binding and enforceable agreements or contracts, and contracts and agreements for agency administration or operation. AB 1484 further clarifies certain matters associated with the dissolution of RDAs and addresses substantive issues related to administrative processes, affordable housing activities, and repayment of loans from communities, use of existing bond proceeds, and the disposition or retention Successor Agency assets.

In order to facilitate the wind down process, on behalf of the Successor Agency, the City Council has adopted the following Resolutions:

- Resolution No. 2012-13, adopted on February 28, 2012, approving a Recognized Obligation Payment Schedule for the period of January 1, 2012 through June 30, 2012.
- Resolution No. 2012-22, adopted on April 10, 2012, approving a Second Recognized Obligation Payment Schedule for the period of July 1, 2012 through December 31, 2012.
- Resolution No. SA 2013-02, adopted on February 26, 2013, approving a Recognized Obligation Payment Schedule (ROPS 13-14 A) for the period of July 1, 2013 through December 31, 2013.
- Resolution No. SA 2013-09, adopted on September 24, 2013, approving a Recognized Obligation Payment Schedule (ROPS 13-14 B) for the period of January 1, 2014 through June 30, 2014.



- Resolution No. SA 2014-01, adopted on February 25, 2014, approving a Recognized Obligation Payment Schedule (ROPS 14-15 A) for the period of July 1, 2014 through December 31, 2014.
- Resolution No. SA 2014-02, adopted on September 23, 2014, approving a Recognized Obligation Payment Schedule (ROPS 14-15 B) for the period of January 1, 2015 through June 30, 2015.
- Resolution No. SA 2015-01, adopted on February 24, 2015, approving a Recognized Obligation Payment Schedule (ROPS 15-16 A) for the period of July 1, 2015 through December 31, 2015.

Once approved, the ROPS 15-16 B will be submitted to the Successor Agency's oversight board ("Oversight Board") for review and approval. Upon approval by the Oversight Board, a copy of the approved ROPS will be transmitted to the County-Auditor Controller, the State Controller's Office, the State Department of Finance, and posted to the City's website.

### **ALTERNATIVES**

1. Adopt the attached proposed resolution, which approves the Recognized Obligation Payment Schedule, including the administrative budget for the period of January 1, 2016 through June 30, 2016 and authorizing the transmittal of said Schedules to the Oversight Board for review and approval. *Staff recommends this alternative because it allows the City serving as the Successor Agency to make required debt service payments in accordance with the State legislation.*
2. Decline to adopt the attached proposed resolution which would not allow the City, serving as the Successor Agency, to maintain the operations, and fulfill debt obligations of the former RDA as required by law. *Staff does not recommend this alternative.*

### **FISCAL IMPACT**

The Recognized Obligation Payment Schedule provides the details necessary for the City serving as the Successor Agency to fulfill the former RDA's legally binding and enforceable agreements. The ROPS 15-16 B will serve as authorization to pay obligations listed during the noted period including allowable administrative costs of \$125,000.

With the dissolution of the former RDA, there are continued risks that the payment of certain agreements may not be approved by the California Department of Finance, which will impact the General Fund. When these costs can be considered a short-term loan from the City to the Successor Agency and thus considered an enforceable obligation of the Successor Agency, the City shall seek reimbursement as available.

### **NOTIFICATION**

No public notice is required prior to the City Council taking action on this item. However, the agenda for the meeting during which this item may be considered has been posted in the three locations that have been designated for the posting of City Council agendas.

Prepared By:  
Marshall Eyerman  
Financial Resources Division Manager

Department Head Approval:  
Richard Teichert  
Chief Financial Officer

**CITY COUNCIL GOALS**

**Revenue Diversification and Preservation.** Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

**ATTACHMENTS**

- 1. Moreno Valley ROPS 15-16B
- 2. Resolution No. SA 2015-02\_Approving ROPS 15-16B

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/11/15 9:46 AM
City Attorney Approval	<u>✓ Approved</u>	9/15/15 1:32 PM
City Manager Approval	<u>✓ Approved</u>	9/15/15 2:04 PM

**Recognized Obligation Payment Schedule (ROPS 15-16B) - Summary**

Filed for the January 1, 2016 through June 30, 2016 Period

Name of Successor Agency: Moreno Valley  
 Name of County: Riverside

<b>Current Period Requested Funding for Outstanding Debt or Obligation</b>		<b>Six-Month Total</b>
<b>Enforceable Obligations Funded with Non-Redevelopment Property Tax Trust Fund (RPTTF) Funding</b>		
<b>A Sources (B+C+D):</b>		<b>\$ -</b>
B Bond Proceeds Funding (ROPS Detail)		-
C Reserve Balance Funding (ROPS Detail)		-
D Other Funding (ROPS Detail)		-
<b>E Enforceable Obligations Funded with RPTTF Funding (F+G):</b>		<b>\$ 3,437,620</b>
F Non-Administrative Costs (ROPS Detail)		3,312,620
G Administrative Costs (ROPS Detail)		125,000
<b>H Total Current Period Enforceable Obligations (A+E):</b>		<b>\$ 3,437,620</b>

<b>Successor Agency Self-Reported Prior Period Adjustment to Current Period RPTTF Requested Funding</b>		
I Enforceable Obligations funded with RPTTF (E):		3,437,620
J Less Prior Period Adjustment (Report of Prior Period Adjustments Column S)		(3,451)
<b>K Adjusted Current Period RPTTF Requested Funding (I-J)</b>		<b>\$ 3,434,169</b>

<b>County Auditor Controller Reported Prior Period Adjustment to Current Period RPTTF Requested Funding</b>		
L Enforceable Obligations funded with RPTTF (E):		3,437,620
M Less Prior Period Adjustment (Report of Prior Period Adjustments Column AA)		-
<b>N Adjusted Current Period RPTTF Requested Funding (L-M)</b>		<b>3,437,620</b>

Certification of Oversight Board Chairman:  
 Pursuant to Section 34177 (m) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named agency.

_____	_____
Name	Title
/s/ _____	_____
Signature	Date

**Moreno Valley Recognized Obligation Payment Schedule (ROPS 15-16B) - ROPS Detail**  
**January 1, 2016 through June 30, 2016**  
 (Report Amounts in Whole Dollars)

A	B	C	D	E	F	G	H	I	J	K				O	P
										M					
										Nond-Redevelopment Property Tax Trust Fund (Non-RPTTF)					
L		M		N		O									
Item #	Project Name / Debt Obligation	Obligation Type	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Retired	Bond Proceeds	Reserve Balance	Other Funds	Non-Admin	Admin	Six-Month Total
								\$ -		\$ -	\$ -	\$ -	\$ 3,312,620	\$ 125,000	\$ 3,437,620
1	2007 Tax Allocation Bonds	Bonds Issued On or Before 12/31/10	11/29/2007	8/1/2038	Wells Fargo Bank	Debt service payments for bonds	Original Area		N				1,004,004		\$ 1,004,004
2	2007 Special Tax Refunding Bonds Towngate 87-1	Bonds Issued On or Before 12/31/10	11/29/2007	12/1/2021	Wells Fargo Bank	Debt service payments for bonds issued to finance the acquisition of public facilities	Original Area		N				594,496		\$ 594,496
3	Improvement Area No. 1 Special Tax Refunding Bonds	Bonds Issued On or Before 12/31/10	11/29/2007	10/1/2023	Wells Fargo Bank	Debt service payments for bonds issued to finance the construction of public facilities	Original Area		N				139,120		\$ 139,120
5	2011 Refunding of 97 LRB Bonds	Revenue Bonds Issued After 12/31/10	1/1/2011	11/1/2022	Bank of America	Debt service payments for bonds issued to finance the construction of a public facility	Original Area		N				150,000		\$ 150,000
7	On-going Housing Monitoring Requirements	Project Management Costs	1/1/2014	6/30/2014	City of Moreno Valley/Successor Agency	Costs to perform the recertification and monitoring of housing units	Original Area		N				25,000		\$ 25,000
10	Contract for Abatement of Properties	Property Maintenance	7/1/2009	7/30/2014	Fire Prevention/Inland Empire Property Service, Inc.	Nuisance/weed abatement of Agency owned properties	Original Area		N						\$ -
13	CalPERS Retirement Liability	Unfunded Liabilities	7/1/2012	7/1/2031	The California Public Employees' Retirement System (CalPERS)	Unfunded PERS Retirement Liability Acct	Original Area		N						\$ -
14	Retiree Medical Trust (CERBT)	Unfunded Liabilities	7/1/2012	7/1/2031	California Employers' Retiree Medical Trust(CERBT)/CalPERS	Unfunded Retiree Medical Trust Acct	Original Area		N						\$ -
17	Towngate Acquisition Note	Third-Party Loans	5/3/2004	6/30/2044	City of Moreno Valley	Participation Agreement	Original Area		N				700,000		\$ 700,000
19	Robertson's Ready Mix, Inc. OPA	OPA/DDA/Construction	9/26/2006	9/30/2028	Robertson's Ready Mix, Inc.	Owner Participation Agreement	Original Area		N				300,000		\$ 300,000
24	Payroll Costs/Operating Costs	Admin Costs	1/1/2015	6/30/2015	City of Moreno Valley/Employees	Successor Agency's Payroll & Operating Costs	Original Area		N					125,000	\$ 125,000
86	Housing Entity Administrative Cost Allowance per AB 471Project	Housing Entity Admin Cost	7/1/2014	6/30/2018	Moreno Valley Housing Authority	Housing entity administrative cost allowance per AB 471			N				150,000		\$ 150,000
87	(16) Price Club Acquisition Note	Third-Party Loans	5/7/1992	5/7/2015	The Price Family Charitable Fund	Participation Agreement	Original Area	-	N				250,000		\$ 250,000
88									N						\$ -
89									N						\$ -
90									N						\$ -
91									N						\$ -
92									N						\$ -
93									N						\$ -
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111									N						\$ -
112									N						\$ -
113									N						\$ -
114									N						\$ -

**Moreno Valley Recognized Obligation Payment Schedule (ROPS 15-16B) - Report of Cash Balances  
(Report Amounts in Whole Dollars)**

Pursuant to Health and Safety Code section 34177 (l), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation. For tips on how to complete the Report of Cash Balances Form, see [\[ INSERT URL LINK TO CASH BALANCE TIPS SHEET \]](#)

A	B	C	D	E	F	G	H	I	
		<b>Fund Sources</b>							
		<b>Bond Proceeds</b>		<b>Reserve Balance</b>		<b>Other</b>	<b>RPTTF</b>		
	<b>Cash Balance Information by ROPS Period</b>	Bonds Issued on or before 12/31/10	Bonds Issued on or after 01/01/11	Prior ROPS period balances and DDR RPTTF balances retained	Prior ROPS RPTTF distributed as reserve for future period(s)	Rent, Grants, Interest, Etc.	Non-Admin and Admin	<b>Comments</b>	
<b>ROPS 14-15B Actuals (01/01/15 - 06/30/15)</b>									
1	<b>Beginning Available Cash Balance (Actual 01/01/15)</b>	-	-	-	-	30,541	79,153	Matches 15/16A est. ending cash	
2	<b>Revenue/Income (Actual 06/30/15)</b> RPTTF amounts should tie to the ROPS 14-15B distribution from the County Auditor-Controller during January 2015	-	-	-	-	31,938	3,214,306	Column G - Interest Income	
3	<b>Expenditures for ROPS 14-15B Enforceable Obligations (Actual 06/30/15)</b> RPTTF amounts, H3 plus H4 should equal total reported actual expenditures in the Report of PPA, Columns L and Q	-	-	-	-	-	3,370,841	Matches PPA sheet	
4	<b>Retention of Available Cash Balance (Actual 06/30/15)</b> RPTTF amount retained should only include the amounts distributed as reserve for future period(s)	-	-	-	-	-	-		
5	<b>ROPS 14-15B RPTTF Prior Period Adjustment</b> RPTTF amount should tie to the self-reported ROPS 14-15B PPA in the Report of PPA, Column S	No entry required						3,451	
6	<b>Ending Actual Available Cash Balance</b> C to G = (1 + 2 - 3 - 4), H = (1 + 2 - 3 - 4 - 5)	\$ -	\$ -	\$ -	\$ -	\$ 62,479	\$ (80,833)	Estimated Price Club and Towngate on 15/16A. Additional amount paid captured on 15/16B	
<b>ROPS 15-16A Estimate (07/01/15 - 12/31/15)</b>									
7	<b>Beginning Available Cash Balance (Actual 07/01/15)</b> (C, D, E, G = 4 + 6, F = H4 + F4 + F6, and H = 5 + 6)	\$ -	\$ -	\$ -	\$ -	\$ 62,479	\$ (77,382)		
8	<b>Revenue/Income (Estimate 12/31/15)</b> RPTTF amounts should tie to the ROPS 14-15B distribution from the County Auditor-Controller during June 2015	-	-	-	-	-	2,975,235	DOF approved 4/10/15 Letter. Approved for distribution. ROPS 15/16A	
9	<b>Expenditures for ROPS 14-15B Enforceable Obligations (Estimate 12/31/15)</b>	-	-	-	-	30,541	3,069,509	DOF approved 4/10/15 Letter. Approved for obligations. ROPS 15/16 A	
10	<b>Retention of Available Cash Balance (Estimate 12/31/15)</b> RPTTF amount retained should only include the amounts distributed as reserve for future period(s)	-	-	-	-	-	-		
11	<b>Ending Estimated Available Cash Balance (7 + 8 - 9 - 10)</b>	\$ -	\$ -	\$ -	\$ -	\$ 31,938	\$ (171,656)		

Moreno Valley Recognized Obligation Payment Schedule (ROPS 15-16B) - Report of Prior Period Adjustments  
Reported for the ROPS 14-15B (January 1, 2015 through June 30, 2015) Period Pursuant to Health and Safety Code (HSC) section 34186 (a)  
(Report Amounts in Whole Dollars)

**ROPS 14-15B Successor Agency (SA) Self-reported Prior Period Adjustments (PPA):** Pursuant to HSC Section 34186 (a), SAs are required to report the differences between their actual available funding and their actual expenditures for the ROPS 14-15B (January through June 2015) period. The amount of Redevelopment Property Tax Trust Fund (RPTTF) approved for the ROPS 15-16B (January through June 2016) period will be offset by the SA's self-reported ROPS 14-15B prior period adjustment. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by SAs are subject to audit by the county auditor-controller (CAC) and the State Controller.

**ROPS 14-15B CAC PPA:** To be completed by the CAC upon submittal of the ROPS 15-16B by the SA to Finance and the CAC. Note that CACs will need to enter their own formulas at the line item level pursuant to the manner in which they calculate the PPA. Also note that the Admin amounts do not need to be listed at the line item level and may be entered as a lump sum.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	
Item #	Project Name / Debt Obligation	Non-RPTTF Expenditures						RPTTF Expenditures										SA Comments	RPTTF Expenditures						CAC Comments			
		Bond Proceeds		Reserve Balance		Other Funds		Non-Admin					Admin						Net SA Non-Admin and Admin PPA (Amount Used to Offset ROPS 15-16B Requested RPTTF)	Non-Admin CAC			Admin CAC			Net CAC Non-Admin and Admin PPA (Amount Used to Offset ROPS 15-16B Requested RPTTF)		
		Authorized	Actual	Authorized	Actual	Authorized	Actual	Authorized	Available RPTTF (ROPS 14-15B distributed + all other available as of 01/1/15)	Net Lesser of Authorized / Available	Actual	Difference (If K is less than L, the difference is zero)	Authorized	Available RPTTF (ROPS 14-15B distributed + all other available as of 01/1/15)	Net Lesser of Authorized / Available	Actual	Difference (If total actual exceeds total authorized, the total difference is zero)			Net Difference (M+R)	Net Lesser of Authorized / Available	Actual	Difference	Net Lesser of Authorized / Available			Actual	Difference
1	2007 Tax Allocation							\$ 3,169,015	\$ 3,169,015	\$ 3,169,015	\$ 3,246,292	\$ 3,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 124,549	\$ 451	\$ 3,451							\$ -			\$ -
2	2007 Special Tax							1,008,117	1,008,117	1,008,117	1,008,717	\$ -						\$ -										
3	Improvement Area No. 1 Special Tax Refunding Bonds							138,948	138,948	138,948	138,948	\$ -						\$ -										
5	2011 Refunding of 97 LRB Bonds									\$ -									\$ -									
6	2005 Lease Revenue Bonds									\$ -									\$ -									
7	On-going Housing Monitoring Requirements									\$ -									\$ -									
8	Contract for Legal Services									\$ -									\$ -									
9	Contract for Legal Services									\$ -									\$ -									
10	Contract for Abatement of Properties							3,000	3,000	\$ 3,000	\$ 3,000	\$ 3,000						\$ 3,000										
11	Contract for Audit Services									\$ -									\$ -									
12	Contract for Special Tax Reporting									\$ -									\$ -									
13	CalPERS Retirement Liability									\$ -									\$ -									
14	Retiree Medical Trust (CERBT)									\$ -									\$ -									
15	Agency Loans #1 & 2									\$ -									\$ -									
16	Price Club Acquisition Note							301,106	301,106	\$ 301,106	\$ 344,698	\$ -						\$ -										
17	Towngate Acquisition Note							1,124,725	1,124,725	\$ 1,124,725	\$ 1,160,809	\$ -						\$ -										
19	Robertson's Ready Mix, Inc. OPA									\$ -									\$ -									
24	Payroll Costs/Operating Costs									\$ -									\$ -									
83	Public Works Agreement									\$ -									\$ -									
84	Agency Loan									\$ -									\$ -									
85	Unfunded Accrued Leaves Liability									\$ -									\$ -									
86	Housing Entity Administrative Cost Allowance per AB 471Project									\$ -									\$ -									



## RESOLUTION NO. SA 2015-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, SERVING AS SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE PERIOD OF JANUARY 1, 2016 THROUGH JUNE 30, 2016 (ROPS 15-16 B), AND AUTHORIZING THE CITY MANAGER ACTING FOR THE CITY OF MORENO VALLEY OR HIS/HER DESIGNEE TO MAKE MINOR MODIFICATIONS THERETO

**WHEREAS**, the City Council of the City of Moreno Valley agreed to serve as successor agency to the Community Redevelopment Agency of the City of Moreno Valley ("Former RDA") commencing upon dissolution of the Former RDA on February 1, 2012 pursuant to Assembly Bill x1 26, as amended by AB 1484; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(l), before each six-month fiscal period, the successor agency to a dissolved redevelopment agency such as the Former RDA is required to adopt a draft Recognized Obligation Payment Schedule ("ROPS") that lists all of the obligations that are "enforceable obligations" within the meaning of Health and Safety Code Section 34171, and which identifies a source of payment for each such obligation from among (i) the Low and Moderate Income Housing Fund; (ii) bond proceeds; (iii) reserve balances; (iv) the administrative cost allowance; (v) revenues from rents, concessions, interest earnings, and asset sales; and (vi) the Redevelopment Property Tax Trust Fund established by the County Auditor-Controller to the extent no other source of funding is available or payment from property tax is contractually or statutorily required; and

**WHEREAS**, the City of Moreno Valley ("City"), acting as the successor agency to the Former RDA ("Successor Agency") has prepared a ROPS and an administrative budget covering the period January 1, 2016 through June 30, 2016 ("ROPS 15-16 B"); and

**WHEREAS**, the draft ROPS must be concurrently submitted to the County Administrative Officer, the County Auditor-Controller, the State Department of Finance, and the Successor Agency's oversight board ("Oversight Board").

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, SERVING AS THE SUCCESSOR AGENCY, DOES HEREBY RESOLVE AS FOLLOWS:

1  
Resolution No. SA 2015-02  
Date Adopted: September 22, 2015



**SECTION 1. RECITALS**

That the foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this resolution.

**SECTION 2. APPROVAL OF ROPS 15-16 B AND ADMINISTRATIVE BUDGET**

That the City Council acting on behalf of the Successor Agency hereby approve and adopt ROPS 15-16 B and the related administrative budget, in substantially the form attached hereto as Exhibit "A."

**SECTION 3. TRANSMITTAL**

That City staff, acting for the Successor Agency, is directed to transmit the ROPS 15-16 B to the Oversight Board, County Administrative Officer, the County Auditor-Controller, and the State Department of Finance.

**Section 4. OTHER ACTS**

That the City Manager, acting for the Successor Agency, or his/her designee is hereby authorized to make minor modifications to the ROPS 15-16 B, and each officer of the City, acting for the Successor Agency, is hereby authorized and directed, jointly and severally, to execute and deliver such documents and instruments and to do such things which may be necessary or proper to effectuate the purposes of this Resolution, and any such actions previously taken by such officers are hereby ratified, approved and confirmed. Such acts shall include, but shall not be limited to, reformatting of the ROPS 15-16 B as may be required by the Department of Finance.

**Section 5. SEVERABILITY**

That if any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council acting for the Successor Agency hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

**Section 6. EFFECTIVE DATE**

That this Resolution shall take effect immediately upon adoption.

2  
Resolution No. SA 2015-02  
Date Adopted: September 22, 2015

**Section 7. CERTIFICATION**

That the City Clerk acting for the Successor Agency shall certify to the passage of this Resolution and enter it into the book of original resolutions.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

3  
Resolution No. SA 2015-02  
Date Adopted: September 22, 2015

APPROVED AND ADOPTED this 22<sup>th</sup> day of September 2015.

\_\_\_\_\_  
Mayor acting for Successor Agency

ATTEST:

\_\_\_\_\_  
City Clerk acting for Successor Agency

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney acting for Successor Agency

4  
Resolution No. SA 2015-02  
Date Adopted: September 22, 2015

Attachment: Resolution No. SA 2015-02\_Approving ROPS 15-16B [Revision 1] (1607 : RESOLUTION OF THE CITY OF MORENO VALLEY

**RESOLUTION JURAT**

STATE OF CALIFORNIA            )  
COUNTY OF RIVERSIDE        ) ss.  
CITY OF MORENO VALLEY        )

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, do hereby certify that Resolution No. SA 2015-02 was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the 22nd of September 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

\_\_\_\_\_  
CITY CLERK

(SEAL)

5  
Resolution No. SA 2015-02  
Date Adopted: September 22, 2015

Attachment: Resolution No. SA 2015-02\_ Approving ROPS 15-16B [Revision 1] (1607 : RESOLUTION OF THE CITY OF MORENO VALLEY

**EXHIBIT "A"**

**ROPS 15-16 B COVERING JANUARY 1, 2016 THROUGH JUNE 30, 2016**

**SEE ATTACHED**

**Attachment: Resolution No. SA 2015-02\_Approving ROPS 15-16B [Revision 1] (1607 : RESOLUTION OF THE CITY OF MORENO VALLEY**

6  
Resolution No. SA 2015-02  
Date Adopted: September 22, 2015



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Chris Paxton, Administrative Services Director

**AGENDA DATE:** September 22, 2015

**TITLE:** MUNICIPAL SHELTER SPAY NEUTER GRANT AWARD

---

### **RECOMMENDED ACTION**

#### **Recommendation:**

1. Receive and accept a grant award in the amount of \$15,000 from the California Department of Food & Agriculture for the purpose of providing low to no cost spaying and neutering of dogs and cats owned by individuals residing in the City.

### **SUMMARY**

This report recommends acceptance of a \$15,000 grant award from the California Department of Food & Agriculture (CDFA). Funds will be used to provide low to no cost spay and neuter services to residents with unaltered pets. This funding can only be used for pets in the community and not for pets that are impounded at the Moreno Valley Animal Shelter.

### **DISCUSSION**

The CDFA administers the Municipal Shelter Spay-Neuter Program through funds provided by the Franchise Tax Board. For the 2014 tax year, California taxpayers could elect to donate all or a portion of any of their tax refund monies to the Municipal Shelter Spay-Neuter Program.

Moreno Valley Animal Services met the eligibility requirements of being current on the reporting requirements to the State Department of Public Health, Veterinary Public Health Section (Annual Report of Rabies Control) along with offering low cost spay-neuter services for dogs and cats at the Moreno Valley Animal Clinic.

Grants awarded were considered on a first come, first serve basis. Eligible municipal animal shelters with an annual intake between 5,000 to 25,000 dogs and cats were

eligible to receive up to \$15,000.

Grant funds will be used to sterilize 200 to 250 dogs and/or cats owned by individual City residents. Funds will be used on a first come, first serve basis until all funds have been exhausted. Grant funds must supplement, not replace other funding sources. Impounded animals do not qualify for this service.

**ALTERNATIVES**

- 1) Accept the grant award of \$15,000.
- 2) Reject the grant award of \$15,000.
- 3) Provide staff with further direction

Staff recommends Alternative Number 1.

**FISCAL IMPACT**

The fiscal impact of accepting the \$15,000 grant award will increase the Animal Services Division’s expenditure budget for FY 2015-16 as identified below.

**This program funding is restricted for dogs and cats owned by City residents and impounded dogs and cats at the Moreno Valley Animal Shelter do not qualify for this program.**

Description	Fund	GL Account No.	Type (Rev/Exp)	FY 15/16 Budget	Proposed Adjustments	FY 15/16 Amended Budget
Receipt of Grant	Grant	2300-18-38-73312-486000	Rev	\$0.00	\$15,000	\$15,000
Prof. Svcs.- Vet	Grant	2300-18-38-73312-620250	Exp	\$0.00	\$15,000	\$15,000

**PREPARATION OF STAFF REPORT**

Prepared By:  
Steve Fries  
Animal Services Division Manager

Department Head Approval:  
Chris Paxton  
Administrative Services Director

**CITY COUNCIL GOALS**

**Positive Environment.** Create a positive environment for the development of Moreno Valley's future.

**ATTACHMENTS**

- 1. Spay-NeuterGrantAward-2015

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	7/02/15 5:16 PM
City Attorney Approval	<u>✓ Approved</u>	7/02/15 5:16 PM
City Manager Approval	<u>✓ Approved</u>	7/02/15 5:16 PM



# Journal Listing with Check Number 2

Printed: 17 Jun 2015, 09:29 AM

User: sheilab

Last Reset #: 33230 Wed Jun 17, 15 04:00 AM



Date From: 17 Jun 2015  
Trans # From: 403554

Date To: 17 Jun 2015  
Trans # To: 403554

Terminal: Workstation 1  
Location: Finance

Transaction: 403554 Wed Jun 17, 15 08:24 Status: Complete  
 User: Zarazua, Claudia Reset #: None  
 Payee Name:  
 STATE OF CALIFORNIA

Misc GL	Item #	Qty	Gross	Adj	Net
	140	1	\$15,000.00		\$15,000.00

GL Account:  
2300-18-38-73312-486000

Description:  
STATE GRANT OP REV-SPAY/NEL

Subtotal:	15,000.00
Total:	\$15,000.00

Payment: Scanned Chec \$15,000.00

Attachment: Spay-NeuterGrantAward-2015 (1569 : MUNICIPAL SHELTER SPAY NEUTER GRANT AWARD)

**Steve Fries**

**From:** Ruth Guillén  
**Sent:** Thursday, June 04, 2015 3:13 PM  
**To:** 'grants@cdfa.ca.gov'  
**Cc:** Steve Fries  
**Subject:** FW: 2015 Municipal Spay-Neuter Grant Award Notice

**Importance:** High

We are proud to be the recipients of this grant award. However, we would like to note our correct mailing address. Thank you.

City of Moreno Valley – Animal Services Division  
 ATTN: Steve Fries  
 14041 Elsworth Street  
 P.O. Box 88005  
 Moreno Valley, CA 92552-0805

**Ruth Guillén**

**Animal Services Office Supervisor**  
**Administrative Services**  
**City of Moreno Valley**

p: 951.413.3785 | e: [ruthg@moval.org](mailto:ruthg@moval.org) W: [www.moval.org](http://www.moval.org)

14041 Elsworth Street, Moreno Valley, CA 92553

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**From:** CDFA Grants@CDFA [<mailto:Grants@cdfa.ca.gov>]  
**Sent:** Thursday, June 04, 2015 3:03 PM  
**To:** Ruth Guillén; Steve Fries  
**Subject:** 2015 Municipal Spay-Neuter Grant Award Notice  
**Importance:** High

**2015 Municipal Spay-Neuter Grant Award Notice**

Congratulations! Your organization meets the program criteria for the 2015 Municipal Spay-Neuter Grant Fund and will be awarded \$15,000 based on the funding formula provided in the California Revenue Taxation Code (CRTX) Section 18755.2(c). CDFA anticipates disbursing the funds within 30 days from the date of this notification. Awards will be made payable to the organization name as it was listed on the application and mailed to:

City of Moreno Valley - Animal Services Division

ATTN: Steve Fries

PO Box 88005

Attachment: Spay-NeuterGrantAward-2015 (1569 : MUNICIPAL SHELTER SPAY NEUTER GRANT AWARD)

Hanford, CA 93230

Grant funds must be used to supplement, not replace, other funding sources for spay-neuter services and programs. Additionally, grant funds shall only be used to spay or neuter dogs and cats owned by individual members of the public. (Grant funds cannot be used to spay or neuter any animal that is impounded by an eligible municipal shelter.)

Thank you for your participation in the 2015 Municipal Spay-Neuter Grant process. Should you have any questions, e-mail [grants@cdfa.ca.gov](mailto:grants@cdfa.ca.gov).

Federal Funds Management Office

California Department of Food and Agriculture

Tel: (916) 657-3231

[grants@cdfa.ca.gov](mailto:grants@cdfa.ca.gov)

[www.cdfa.ca.gov/SpayNeuter](http://www.cdfa.ca.gov/SpayNeuter)

Attachment: Spay-NeuterGrantAward-2015 (1569 : MUNICIPAL SHELTER SPAY NEUTER GRANT AWARD)



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Richard Teichert, Chief Financial Officer

**AGENDA DATE:** September 22, 2015

**TITLE:** PUBLIC HEARING TO ADOPT SUBSTANTIAL AMENDMENT #1 TO THE 2015-16 ANNUAL ACTION PLAN

---

### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council:**

1. Conduct a Public Hearing to allow public comment on the proposed Substantial Amendment #1 to the FY 2015-2016 Annual Action Plan.
2. Review and adopt the proposed Substantial Amendment #1 to the FY 2015-2016 Annual Action Plan.
3. Approve the necessary revenue and expense appropriations and authorize the Chief Financial Officer to process the adjustments.
4. Authorize the City Manager to reallocate grant funds between HUD-approved grant activities.

### **SUMMARY**

As a recipient of federal grant funding, the City of Moreno Valley completes a five-year Consolidated Plan and an Annual Action Plan that detail the use of the grant funds. Federal law requires that in cases where there are substantial changes to an Annual Action Plan and/or Consolidated Plan, cities notify their citizens of the proposed amendment(s), provide them the opportunity to comment on the changes, hold a Public Hearing, and then submit the Council-approved 'Substantial Amendment(s)' to HUD for final approval. This staff report proposes changes to activities within the FY 2015-16 Action Plan as follows:

## (1) CDBG Program:

Increase the allocation to the Fair Housing Council of Riverside County, Inc. (FHRC), Fair Housing (Administration) Program by \$17,416 to add expanded Landlord/Tenant Services and Mediation Services;

## (2) HOME Program:

Incorporate two 4-unit multi-family acquisitions, rehabilitations, and rental projects at 22889 and 22899 Allies Place and allow for the allocation of funding to a not-to-exceed amount of \$1.3 million of HOME funds to these two projects including but not limited to HOME and Community Housing Development Organization (CHDO) set-aside monies to create affordable housing in the “horseshoe” neighborhood in Edgemont.

## **DISCUSSION**

Federal law requires entitlement cities, such as Moreno Valley, to submit their Annual Action Plan outlining the intended use for grant funding 45-days before the start of a fiscal year. Moreno Valley timely submitted its Annual Action Plan. On May 12, 2015, the Moreno Valley City Council approved the FY 2015-16 Action Plan. In cases where there are changes to an approved Plan, cities must notify their citizens of the proposed change and provide them the opportunity to comment. A Public Hearing must also be held prior to the ‘Substantial Amendment’ being forwarded to the Department of Housing and Urban Development (HUD) for review and final approval.

### ***Proposed Action Plan changes affecting the CDBG Program***

Staff is proposing an increase in the allocation to the Fair Housing Council of Riverside County, Inc. (FHRC) Fair Housing Program. It is proposed that the activity budget be increased by \$17,416 and be funded as part of the CDBG administration fund. The expansion in services would allow for increased dispute resolution and mediation services for tenants and landlords who are experiencing rental issues as well as expanded education on tenant/landlord rights and responsibilities which includes dissemination of educational materials, counseling, expanded number of workshops and technical trainings for housing professionals (realtors, property owners, and managers).

### ***Proposed Action Plan changes affecting the HOME Program***

As part of the FY 2015-16 Action Plan, set-aside HOME funding is to be for a future multi-family affordable housing project. The specific location and project details were to be determined. The City has now received and reviewed two separate project proposals submitted by long-time Community Housing Development Organization (CHDO), Riverside Community Housing Development Corporation (RHDC), to acquire and rehabilitate two 4-unit multifamily rental buildings, located at 22889 and 22899 Allies Place. These properties are located in the “horseshoe” neighborhood in Edgemont, close to Moreno Valley City Hall. The projects would be located in what is

recognized as a low-income, Target Neighborhood.

The two projects will allow the City to work with RHDC to renovate and update the properties and will be funded using HOME and CHDO set-aside monies; a federal funding source dedicated exclusively to creating affordable housing in the community.

The final proposed allocation for these two separate projects will be presented for City Council consideration under separate cover. If approved, the City investment would not exceed the allowable maximum per unit subsidy allowed by HUD, in this case, up to \$1.3 million for both projects in HOME/CHDO set-aside monies. It's anticipated that the project would ensure the units remain 'affordable' for a term of 55 years and benefit families earning under 60% of the Riverside County area median income.

**ALTERNATIVES**

1. Adopt Substantial Amendment #1, affecting CDBG and HOME, to the FY 15/16 Annual Action Plan; approve the Revenue and Expense Appropriations including an allocation of \$1.3 million for 22889 and 22899 Allies Place, and an increase of \$17,416 in CDBG funds to (FHCRC) Fair Housing Program and authorize the Chief Financial Officer to process the adjustments; and authorize the City Manager to reallocate grant funds between HUD-approved grant activities. **Staff recommends this action because it complies with HUD's substantial amendment requirements, adheres to the mandatory administrative caps, and would allow for the City to better meet the performance goals established for the HOME and CDBG grants.**
  
2. Decline to adopt Substantial Amendment #1 affecting CDBG and HOME to the FY 15/16 Annual Action Plan; decline to approve the revenue and expense appropriations and not authorize the Chief Financial Officer to process the adjustments; and not authorize the City Manager to reallocate grant funds between HUD-approved grant activities. **Staff does not recommend this action because it would result in a failure to meet HUD's substantial amendment requirements, and would constrain efforts to meet the performance goals of the HOME and CDBG grants.**

**FISCAL IMPACT**

The recommended actions to the CDBG and HOME programs will pose **NO FISCAL IMPACT TO THE GENERAL FUND**. Per federal law, these funds are to be used solely for designated activities. The Revenue/Expenditure Appropriations and Budget Adjustments are as follows:

Budget Appropriation Adjustments

Description	Fund	GL Account No.	Type (Rev/Exp)	FY 15/16	Proposed Adjustments	FYs 15/16 Amended Budgets

Receipt of Grant/ HUD Fund Balance	HOME	2506-99-99-92506-485000	Rev	\$516,846	\$1,300,000	\$1,816,846
Allies Place Family Apts	HOME	2506-30-33-72657-xxxxxx	Exp	\$516,846	\$1,300,000	\$1,816,846

**NOTIFICATION**

Notice of this meeting was published in the Press-Enterprise newspaper on August 21, 2015. The official 30 day public review period occurred from August 21 to September 21, 2015. Respondents were given the opportunity to provide comments via email, telephone, and mail.

**PREPARATION OF STAFF REPORT**

Prepared By:  
Isa Rojas  
Management Analyst

Department Head Approval:  
Richard Teichert  
Chief Financial Officer

Concurred By:  
Marshall Eyerman  
Financial Resources Division Manager

**CITY COUNCIL GOALS**

**Positive Environment.** Create a positive environment for the development of Moreno Valley's future.

**Community Image, Neighborhood Pride and Cleanliness.** Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

**ATTACHMENTS**

- 1. Proposed Amendment
- 2. Copy of Public Notice

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/14/15 9:18 AM
City Attorney Approval	<u>✓ Approved</u>	9/15/15 4:57 PM
City Manager Approval	<u>✓ Approved</u>	

---

**CITY OF MORENO VALLEY  
FY 2015/16 ANNUAL ACTION PLAN  
AMENDMENT NO. 1 AFFECTING CDBG & HOME**

---

The Annual Action Plan addresses the City's plan for use of CDBG and HOME funds during Fiscal Year 2015/16. The plan is based upon the 5-year, 2013-2018 Consolidated Plan and facilitates the strategies outlined in the (Consolidated) Plan by addressing community needs through various mechanisms.

This amendment to the FY 2015/16 Action Plan requires citizen participation (including public hearing, public notice and 30-day review period) because the issue is considered a "substantial amendment." A more detailed description of the proposed substantial amendment was made available for public review from August 21, 2015 through September 21, 2015. A public hearing was conducted on September 22, 2015, Moreno Valley City Council Meeting at 6:00 p.m.

The amendment includes the following changes:

- 1) **2015-16 Amendment affecting CDBG** amends the budget and services associated with the Fair Housing Council of Riverside County's Fair Housing Program to add expanded Landlord/Tenant Services and Mediation services. The expansion in services would allow for increased dispute resolution and mediation services for tenants and landlords who are experiencing rental issues as well as expanded education on tenant/landlord rights and responsibilities which includes dissemination of educational materials, counseling, expanded number of workshops and technical trainings for housing professionals (realtors, property owners, and managers). It is proposed that the activity budget be increased by \$17,416 and be funded as part of the CDBG administration fund.
  
- 2) **2015-16 Amendment affecting HOME** incorporates two 4-unit multi-family acquisitions, rehabilitations, and rental project into the 2015-16 Action Plan. The projects are located in a recognized low-income, Target Neighborhood, and funded using HOME, CHDO set-aside monies; a federal funding source dedicated exclusively to creating affordable housing in the community. The City investment would not exceed the allowable maximum per unit subsidy allowed by HUD, in this case \$1.3 million. The project would ensure the units remain 'affordable' for a term of 55 years and benefit families earning under 60% of the Riverside County area median income.

Approved by: \_\_\_\_\_  
Michelle Dawson, City Manager



# THE PRESS-ENTERPRISE

1825 Chicago Ave, Suite 100  
Riverside, CA 92507  
951-684-1200  
951-368-9018 FAX

PROOF OF PUBLICATION  
(2010, 2015.5 C.C.P.)

Publication(s): *West Zone: Moreno Valley*

PROOF OF PUBLICATION OF *3 Riverside*  
*City of Moreno Valley Financial Resource*  
Ad Desc. Ordinance No. 878 / *DIVISION*

I am a citizen of the United States. I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper in general circulation, printed and published daily in the County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 25, 1952, Case Number 54446, under date of March 29, 1957, Case Number 65673, under date of August 25, 1995, Case Number 267864, under date of February 4, 2013, Case Number RIC 1215735, under date of July 25, 2013, Case Number RIC 1305730, and under date of September 16, 2013, Case Number RIC 1309013; that the notice, of which the annexed is a printed copy, has been published in said newspaper in accordance with the instructions of the person(s) requesting publication, and not in any supplement thereof on the following dates, to wit:

I certify (or declare) under penalty of perjury that the foregoing is correct.

Date: *8/21/15*  
At: Riverside, California

Ad Number *10082387-01*

Ad Copy:



## CITY OF MORENO VALLEY UPDATED NOTICE OF PUBLIC COMMENT PERIOD AND UPCOMING PUBLIC HEARING PROPOSED FY 2015-16 ACTION PLAN AMENDMENT

### THIS UPDATED NOTICE PROPOSES ONE ADDITIONAL PROJECT

As a recipient of federal grant funding, the City of Moreno Valley is mandated to complete a five-year Consolidated Plan and an Annual Action Plan that details the use of its grant funds. In cases where there are changes to an approved Plan, cities must notify their citizens of the proposed change and provide them the opportunity to comment. A Public Hearing must also be held and with prior to the 'Substantial Amendment' being forwarded to the Department of Housing and Urban Development (HUD) for review and final approval.

The 'Substantial Amendment' proposes the following changes:

- 1) **FY 2015-16 Amendment affecting CDBG** amends the budget and services associated with the Fair Housing Council of Riverside County's, Fair Housing Program to add expanded Landlord/Tenant Services and Mediation services. The expansion in services would allow for increased dispute resolution and mediation services for tenants and landlords who are experiencing rental issues as well as expanded education on tenant/landlord rights and responsibilities which includes dissemination of educational materials, counseling, expanded number of workshops and technical trainings for housing professionals (realtors, property owners, and managers). It is proposed that the activity budget be increased by \$17,416 and be funded as part of the CDBG administration fund.
- 2) **(\*New\*) FY 2015-16 Amendment affecting HOME** incorporates a 4 to 8-unit multi-family acquisition, rehabilitation, and rental project into the 2015-16 Action Plan. The project would be located in what is recognized low-income, Target Neighborhood, and funded using HOME, CHDO set-aside monies; a federal funding source dedicated exclusively to creating affordable housing in the community. If approved, the City investment would not exceed the allowable maximum per unit subsidy allowed by HUD, in this case, \$629,865 to \$1.3 million. It's anticipated that the project would ensure the units remain 'affordable' for a term of 55 years and benefit families earning under 60% of the Riverside County area median income.

Anyone interested in providing comments or obtaining additional information may do so by contacting the City of Moreno Valley's Financial Resources Division within the Finance Department, at 14177 Frederick Street, Moreno Valley, CA, 951.413.3450, np@moval.org. The proposed Amendment will be made available for public review from August 21, 2015 through September 21, 2015. Comments must be received no later than 5:00 pm on September 21, 2015 but will also be accepted at the Public Hearing to be held on Tuesday, September 22, 2015 at 6:00 p.m. at the City Council Chambers, Moreno Valley City Hall, 14177 Frederick Street, Moreno Valley, CA.

Attachment: Copy of Public Notice (1630 : PUBLIC HEARING TO ADOPT SUBSTANTIAL AMENDMENT #1 TO THE 2015-16 ANNUAL ACTION



Local 2 Friday, Aug 14, 2015

REGION

The Press-Enterprise

BRIEFLY

REGISTRAR'S OFFICE OPEN FOR VOTING

REGISTRAR'S OFFICE OPEN FOR VOTING... Voters will be able to vote at the Registrar's Office...

BOARD MAY SIMPLIFY FEE STRUCTURE

BOARD MAY SIMPLIFY FEE STRUCTURE... The San Jacinto Valley Water Community Development Board...

CAL STATE MAKES VETERANS LIST

CAL STATE MAKES VETERANS LIST... California State University has named 100 veterans to its list of 'warrior friends'...

LAWS ENFORCING... (partially obscured)

LAWS ENFORCING... (partially obscured)

THE PRESS-ENTERPRISE

Subscription information and contact details for The Press-Enterprise.

Local 2 Friday, Aug 14, 2015... (partially obscured)

Victoria Pony Baseball advertisement for Riverside County Residents.

CITY OF MORENO VALLEY UPDATED NOTICE OF PUBLIC COMMENT PERIOD AND UPCOMING PUBLIC HEARING.

Proposed FY 2015-16 Action Plan Amendment... (partially obscured)

Fire destroys Hemet motor home

Dog burned, another possibly killed as blaze destroys couple's belongings...

BOARD MAY SIMPLIFY FEE STRUCTURE

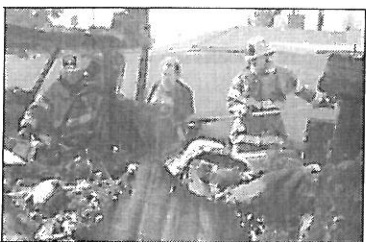
BOARD MAY SIMPLIFY FEE STRUCTURE... (partially obscured)

CAL STATE MAKES VETERANS LIST

CAL STATE MAKES VETERANS LIST... (partially obscured)

LAWS ENFORCING... (partially obscured)

LAWS ENFORCING... (partially obscured)



Firefighters and Tim Bacon survey the wreckage after a fire destroys Bacon's motor home in Hemet on Thursday. Bacon and his wife, Arlene, lost everything.



Hemet resident Tim Bacon and his wife, Arlene, lost everything...

Wishes a fire raged, everything Tim and Arlene Bacon owned was gone... The fire started in the motor home parked on a street in Hemet...

San Jacinto Valley loses two iconic matriarchs

San Jacinto Valley loses two iconic matriarchs... (partially obscured)

San Jacinto Valley loses two iconic matriarchs... (partially obscured)

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Attachment: Copy of Public Notice (1630 : PUBLIC HEARING TO ADOPT SUBSTANTIAL AMENDMENT #1 TO THE 2015-16 ANNUAL ACTION





## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Ahmad R. Ansari, P.E., Public Works Director/City Engineer

**AGENDA DATE:** September 22, 2015

**TITLE:** FUNDING PROPOSAL TO REHABILITATE CERTAIN DISTRESSED STREETS IN THE EDGEMONT NEIGHBORHOOD

---

### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council:**

1. Designate all potential project savings from the Nason Street Improvement Project -- currently estimated at \$270,000 -- to the Citywide Annual Pavement Resurfacing Program.
2. Direct staff to return in November 2015 with recommendations to appropriate available funds to rehabilitate certain distressed streets in the Edgemont neighborhood.

### **SUMMARY**

This report is brought to the Council to seek policy direction regarding prioritization of street improvement projects in the Edgemont area.

In a Study Session discussion on March 17, 2015, regarding the water service infrastructure owned by the Box Springs Mutual Water Company, the City Council expressed support for improving City infrastructure in the Edgemont area. In response to that discussion, City staff has been exploring potential resources that could become available for this purpose.

This report recommends that the City Council designate estimated savings of \$270,000 from the Nason Street Improvement Project (from Cactus Avenue to Fir Avenue) to the Citywide Annual Pavement Resurfacing Program to rehabilitate certain distressed

streets in the Edgemont neighborhood. The amount of funding available will be known when the Nason Street project is complete in November 2015.

## DISCUSSION

On May 13, 2014, the City Council approved the issuance of a purchase order to Hillcrest Contracting, Inc. in the amount of \$8,769,996.98 for the Nason Street Improvement from Cactus Avenue to Fir Avenue Project, supported by Total Road Improvement Program (TRIP) funds. TRIP funds must be expended by June 2016 based on the stipulations of the California Communities Gas Tax Revenue Certificates of Participation (COPS), Series 2011B TRIP Program. The construction work has progressed well and is anticipated to be completed on schedule in November 2015 with approximately \$270,000 in projected savings at this time. Staff is recommending that all of the anticipated TRIP funds savings from the Nason Street Improvement Project be appropriated to the Citywide Annual Pavement Resurfacing Program so that it can be applied expeditiously to rehabilitate designated streets as addressed below.

There is a growing need to rehabilitate distressed streets in the Edgemont neighborhood, as depicted in the attached exhibit. The following specific streets have been identified, for rehabilitation based on the distress level of frequently traveled roadways. The costs listed are preliminary estimates at this time; actual funding availability and precise bid amounts will determine the combination of projects listed below which can be completed.

### Street Pavement Rehabilitation Recommendation

Dracaea Avenue from Edgemont Street to Day Street	\$144,500
Bay Avenue from Day Street to 760 feet east of Day Street	<u>\$ 44,500</u>
Subtotal	\$189,000

### Street Pavement Slurry Seal Recommendation

Arbington Place: Pan Am Bl. to End	\$ 4,500
Berkshire Lane: Pan Am Bl. to End	\$ 4,500
Bay Avenue: 760 Ft. E/o Day St. to Frederick St.	\$62,000
Dracaea Avenue: Edgemont St. to 500 Ft. West	<u>\$ 8,000</u>
Subtotal	\$79,000

<b>Grand Total Street Pavement Work</b>	<b>\$268,000</b>
---	------------------

In July 2015, City Public Works Department staff met with Box Springs Mutual Water Company (BSMWC) staff regarding this pavement rehabilitation plan in the Edgemont

neighborhood. As a follow-up to comments made by the BSMWC Board Chairman during the City Council study session on March 17, 2015, the BSMWC pledged to explore replacing aging water pipelines along the referenced street corridors if it is deemed to be needed before the streets are improved.

### **ALTERNATIVES**

1. Approve the recommended actions as presented in this staff report. *This alternative will allow for the timely use of TRIP fund savings that must be expended by June 2016 deadline as well as facilitate the much needed street pavement rehabilitation in the Edgemont area.*
2. Do not approve the recommended actions as presented in this staff report. *This alternative will require the TRIP fund savings to be designated for another street improvement purpose such as street rehabilitation in other areas.*

### **FISCAL IMPACT**

The TRIP fund savings in combination with the remaining Measure A and Federal STP funds in the Citywide Annual Pavement Resurfacing Program are seen as potential funding sources to support an initial phase of street rehabilitation in the Edgemont neighborhood.

If the Council designates the anticipated funding for Edgemont street improvements, staff will return with recommended appropriation adjustments following completion of the Nason Street Improvement Project in November 2015. This proposal would have no impact upon the General Fund.

### **NOTIFICATION**

The City will continue to monitor street conditions throughout the City. When the funding is appropriated, the City will coordinate the work with all applicable utilities, adjacent property owners, business owners, schools, law enforcement, fire department and other emergency services responders to ensure the planning and construction work progresses smoothly and in a timely manner.

### **PREPARATION OF STAFF REPORT**

Prepared By:  
Prem Kumar, P.E.  
Deputy Public Works Director/Assistant City Engineer

Department Head Approval:  
Ahmad R. Ansari, P.E.  
Public Works Director/ City Engineer

### **CITY COUNCIL GOALS**

**Public Safety.** Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

**Public Facilities and Capital Projects.** Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

**ATTACHMENTS**

- 1. Edgemont Neighborhood Pavement Rehabilitation Exhibit

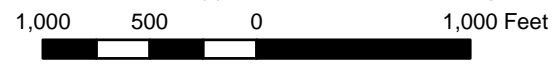
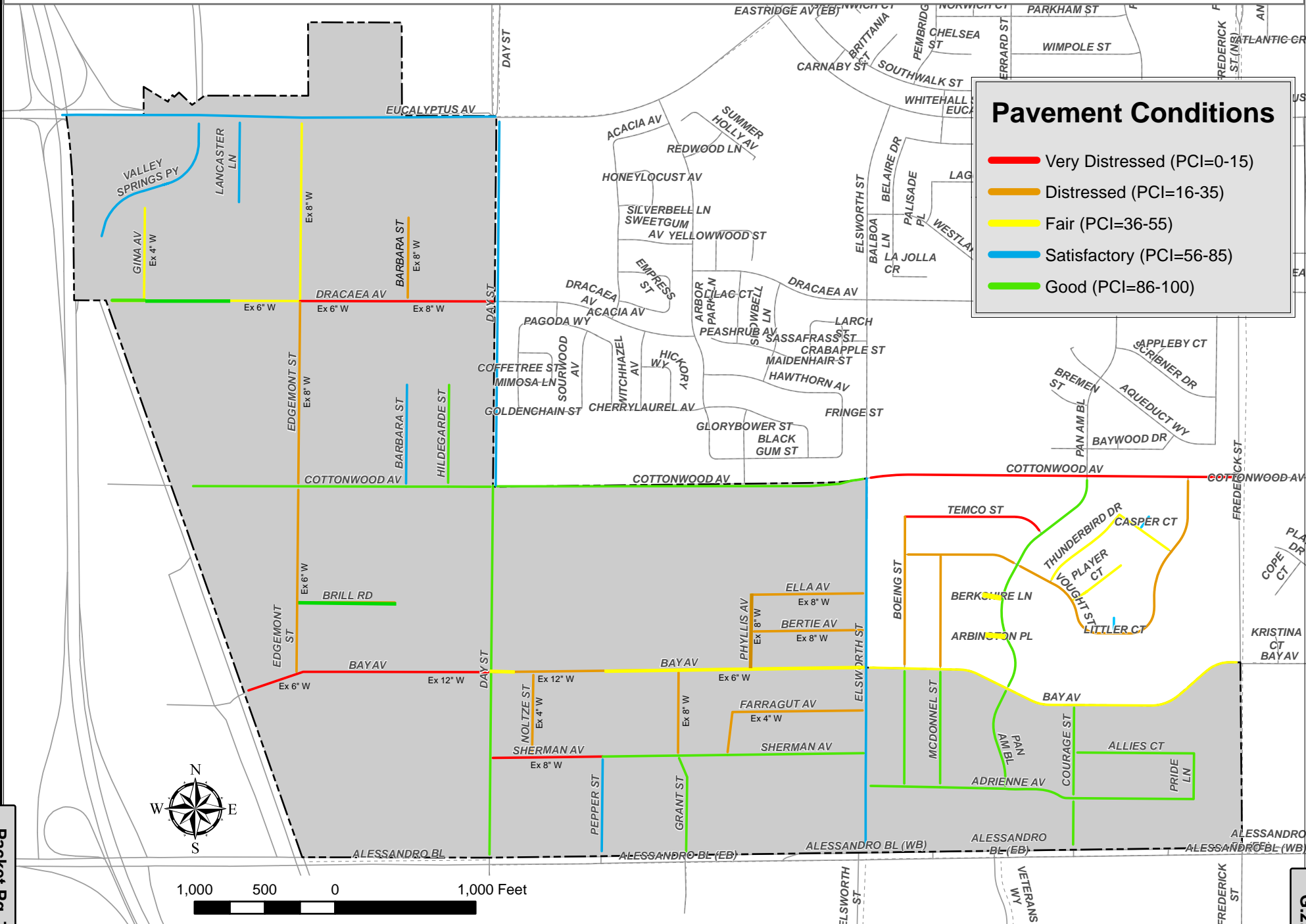
**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/15/15 5:28 PM
City Attorney Approval	<u>✓ Approved</u>	9/16/15 11:03 AM
City Manager Approval	<u>✓ Approved</u>	9/16/15 11:42 AM

# EDGEMONT COMMUNITY STREET PAVEMENT CONDITIONS AND REHABILITATION PRIORITY

### Pavement Conditions

- Very Distressed (PCI=0-15)
- Distressed (PCI=16-35)
- Fair (PCI=36-55)
- Satisfactory (PCI=56-85)
- Good (PCI=86-100)





## Report to City Council

---

**TO:** Mayor and City Council  
 Mayor and City Council Acting in its Capacity as Chairman  
 and Commissioners of the Moreno Valley Housing Authority  
 (HA)

**FROM:** Richard Teichert, Chief Financial Officer

**AGENDA DATE:** September 22, 2015

**TITLE:** AMENDED AND RESTATED AFFORDABLE HOUSING  
 AGREEMENT BY AND AMONG CITY OF MORENO  
 VALLEY, MORENO VALLEY HOUSING AUTHORITY, AND  
 HABITAT FOR HUMANITY, RIVERSIDE, INC.

---

### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council and Housing Authority:**

1. Approve the Amended and Restated Affordable Housing Agreement by and among City of Moreno Valley, Moreno Valley Housing Authority and Habitat for Humanity, Riverside, Inc.
2. Authorize the City Manager and Executive Director of the Moreno Valley Housing Authority, or his or her designee, to prepare, approve and execute all project-related documents.
3. Authorize the City Manager to approve future amendments to the Affordable Housing Agreement ("AHA") or undertake any other actions necessary, proper or convenient to the implementation of the AHA, as long as such revisions do not substantially increase the City's stated obligations or materially change the uses or development permitted on the site.
4. Approve the Revenue and Expense Appropriations and authorize the Chief Financial Officer to process the necessary budget adjustments.

### **SUMMARY**

This report recommends approval of the amendment to the Amended and Restated



Affordable Housing Agreement which shall amend the terms of the AHA and facilitate the development by Habitat for Humanity, Riverside, Inc. (“Habitat”) of an eight (8) lot subdivision located at 24265 Myers Avenue, between Heacock Street and Indian Street. As part of the completion of the project, the proposed amendment to the AHA sets forth the final terms of the property sales, repayment of the loans, and ongoing affordability requirements for the homes. The approval of the proposed amendment is the final step of the process which will allow Habitat to complete the project and to move forward with the sale and transfer of the properties to the future homeowners.

## **DISCUSSION**

On May 13, 2013, the City of Moreno Valley and the Moreno Valley Housing Authority entered into the AHA with Habitat to develop an eight (8) lot single-family residential subdivision to provide homeownership opportunities for income-eligible households earning up to 50% of the Area Median Income (“AMI”), adjusted for household size.

Pursuant to the terms of the AHA, the Housing Authority provided two contiguous parcels (Assessor’s Parcel Numbers 481-250-002 and 003) owned by the City’s former Redevelopment Agency and valued at \$500,000 to Habitat for the development and construction of homes. The City committed funding of \$2.127M using the Department of Housing and Urban Development’s (“HUD”) Neighborhood Stabilization Program (“NSP”) grants (NSP 1 \$1.3M and NSP 3 \$827,000). In exchange, Habitat agreed to serve as the developer and assume full responsibility for all duties pertaining to the development of the project (e.g. entitlements, construction, project and budget management), and the resale of the properties upon completion of construction (e.g. homebuyer selection and preliminary qualification, certification of completion of homebuyer requirements, etc.).

Since the approval of the AHA, the project has experienced delays due to construction challenges; however, substantial progress has been made. Habitat has worked with and through the City and other permitting agencies to obtain all proper and relevant entitlements for the project, including approval and recordation of the final tract map, approval of the site improvement plans (i.e. street, water sewer, storm drain, traffic control plans, etc.), acquisition of building permits and commenced construction in August 2014.

To date, Habitat has completed approximately ninety-percent (90%) of the overall construction. The residential dwellings were substantially completed in April 2015, and only minor finishes remain for installation; however, the infrastructure (sewer, water, storm drain, street, electrical, gas, etc.) are currently under construction after various delays. Since the initial proposal, the Total Development Costs have increased by \$664,026 as itemized in the following table:

<b>Amended Item</b>	<b>Amount</b>	<b>Explanation</b>
Underground EMWD	\$ 190,300	Water system re-designed to address inadequate fire flow, included the installation of a super-hydrant. Infrastructure being upgraded to improve future water pressure for project and surrounding neighbors and serve as a general benefit to the community.
City Fees and Permits	\$ 121,400	Pursuant to SCE Rule 20, the project was conditioned to underground overhead electrical lines. Habitat opted to pay an in-lieu fee. Fees were not included in original budget.

Civil Engineering	\$ 69,416	Site conditions required the re-design/re-routing of sewer and water systems.
Rough Carpentry	\$ 64,496	Material cost increases for lumber.
Retaining Wall	\$ 62,400	Project was initially designed with a perimeter wall, retaining wall required as part of approval of grading plans due to site elevations.
Street Improvements	\$ 40,160	Initially bid by developer based upon plan estimates (unapproved plans). Amount adjusted based on final approved plans.
Plumbing	\$ 40,584	Site conditions required re-design/re-routing of onsite underground systems.
Architectural	\$ 38,320	Initially bid estimated by developer. Amount adjusted based on final costs.
Tile, interior finishes	\$ 36,950	Upgraded from carpet a more sustainable/durable material.
<b>Total</b>	<b>\$ 664,026</b>	

Upon completion of construction, the neighborhood will consist of six (6) 3-bedroom, 2-bath, 1,317 square feet houses (Plan A) and two (2) 4-bedroom, 2-bath, 1,296 square feet homes (Plan B) located on Roberts Way, see Project Site Map (Attachment 2). As part of their contractual obligations, Habitat has already identified and selected income-eligible buyers for seven of the eight homes. All of the selected buyers have undergone a comprehensive homebuyer eligibility process, completed by Rosenow Spevacek Group (“RSG”), a consultancy firm, to confirm eligibility in accordance with eligibility criteria as set forth by HUD. Habitat had identified a homebuyer for the property located at 12915 Roberts Way; however, at the time of final qualification the buyer was deemed ineligible to participate in the program because the buyer’s household income no longer met income requirements and exceeded the maximum allowable income. Habitat is currently in the process of identifying another income-eligible homebuyer for the property. The homebuyers were qualified based upon the following eligibility criteria:

<ul style="list-style-type: none"> <li>Household Size</li> </ul>	<ul style="list-style-type: none"> <li>Debt-to-income ratio not to exceed 43% of income</li> </ul>	<ul style="list-style-type: none"> <li>Loan term: 45 years</li> <li>Annual Interest Rate: 0%</li> </ul>
<ul style="list-style-type: none"> <li>Household Income not to exceed 50% AMI</li> </ul>	<ul style="list-style-type: none"> <li>250-500 hours of “Sweat Equity”</li> </ul>	<ul style="list-style-type: none"> <li>Acceptable Credit Score ≤ 620</li> </ul>
<ul style="list-style-type: none"> <li>Housing Costs not to exceed 30% of income</li> </ul>	<ul style="list-style-type: none"> <li>\$30,000 down payment earned as “Sweat Equity”</li> </ul>	<ul style="list-style-type: none"> <li>Completion of Homebuyer Counseling Course</li> </ul>

Each single-family home will be priced and sold at the fair market value of \$245,000, as determined by a professional appraisal. Due to affordability requirements pertaining to housing costs, each homebuyer’s loan will be restricted to an amount that is affordable not exceeding 30% of household income. As a result, the City and Habitat will hold the first (“silent”) and second (“active”) trust deeds, respectively, with a loan term of 45 years. In the efforts to ensure affordability for the homebuyers, the loan terms were extended from 30-years to 45-years.

The average mortgage held by Habitat will be \$189,000, with the remaining amount required to meet the full purchase price (less “Sweat Equity” down-payment) funded by the City’s deed of trust which averages \$26,000. The homebuyers will make scheduled debt

payments to Habitat on the second mortgage note. The AHA would be amended to allow the retention of the revenues by Habitat for future development of affordable housing in Moreno Valley. The first mortgage note held by the City will be silent, not requiring payments, and will be forgiven at 1/45<sup>th</sup> for each year the homeowner occupies the property as their primary residence. Each home will be subject to 45-year affordability covenants that will be recorded against the property and each subsequent homebuyer will be subject to the program eligibility criteria mentioned above.

As a form of down payment, each homebuyer is required to contribute 250 to 500 hours of "Sweat Equity", depending upon household composition. Sweat Equity is the physical labor homebuyers dedicate to building their home and the homes of others. Sweat Equity is given a valuation of \$30,000.

Below is an example of the financing structure for each property:

Sales Price:	\$245,000
Sweat-Equity Down Payment <sup>1</sup> :	\$30,000
Annual Interest Rate:	0%
Loan Term (years):	45
Total Loan Amount:	\$215,000
Silent First Mortgage Loan (City of Moreno Valley) <sup>2</sup> :	\$26,000
Second Mortgage Loan (Habitat for Humanity) <sup>3</sup> :	\$189,000

**ALTERNATIVES**

1. Approve the Amended and Restated Affordable Housing Agreement; authorize the City Manager and Executive Director of the Housing Authority to execute project-related documents; authorize the City Manager to approve future amendments to the AHA that do not substantially increase City's obligations or materially change uses; approve necessary revenue and expenditure appropriations and authorize the Chief Financial Officer to process adjustments. **Staff recommends this alternative as it will allow the developer to complete the project and allow the City to meet the funding obligations and requirements, as set forth by the NSP Program Guidelines.**
2. Do not approve the Amended and Restated Affordable Housing Agreement; do not authorize the City Manager and Executive Director of the Housing Authority to execute project-related documents; do not authorize the City Manager to approve future amendments to the AHA that do not substantially increase City's obligations or materially change uses; do not approve necessary revenue and expenditure appropriations and do not authorize the Chief Financial Officer to process adjustments. **Staff does not recommend this alternative. Failure to take the above actions would jeopardize the developer's ability to complete the**

<sup>1</sup> 250-500 hours of labor (depending on household composition) dedicated by homebuyers used as a form of down payment valued at \$30,000

<sup>2</sup> Amount will vary. Loan amount is the difference between the Habitat loan and total loan amount.

<sup>3</sup> Amount will vary. Loan amount based upon household income restricted to front-end ratios not to exceed 30% and back-end ratios not to exceed 43%.

project and the City's ability to meet the funding obligations and requirements, as set forth by the NSP Program Guidelines.

**FISCAL IMPACT**

This project is being funded using funds designated for the specific purpose of creating affordable housing opportunities for income-eligible households, as set forth in the terms and conditions of the NSP. **There will be NO impact to the City's General Fund.**

**NSP Appropriations/Budget Adjustments**

Description	Fund	GL Account No.	Type (Rev/Exp)	FY 15/16 Budget	Proposed Adjustments	FY 15/16 Amended Budget
Receipt of Grant/HUD Fund Balance	NSP3	2507-30-33-72703-485000	REV	\$0	\$664,026	\$664,026
NSP3- Redevelopment	NSP3	2507-30-33-72703-733207	EXP	\$0	\$664,026	\$664,026

**NOTIFICATION**

Publication of agenda.

**PREPARATION OF STAFF REPORT**

Prepared By:  
Shanikqua Freeman  
Housing Program Coordinator

Department Head Approval:  
Richard Teichert  
Chief Financial Officer

Concurred By:  
Marshall Eyerman  
Financial Resources Division Manager

**CITY COUNCIL GOALS**

**Positive Environment.** Create a positive environment for the development of Moreno Valley's future.

**Community Image, Neighborhood Pride and Cleanliness.** Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

**ATTACHMENTS**

1. Amended and Restated Affordable Housing Agreement
2. Project Site Map

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/10/15 8:29 AM
City Attorney Approval	<u>✓ Approved</u>	9/15/15 5:45 PM

City Manager Approval

✓ Approved

9/15/15 6:36 PM

**AMENDED AND RESTATED AFFORDABLE HOUSING  
AGREEMENT**

**by and among**

**CITY OF MORENO VALLEY**

**and**

**MORENO VALLEY HOUSING AUTHORITY**

**and**

**HABITAT FOR HUMANITY, RIVERSIDE, INC.**

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**ATTACHMENTS**

ATTACHMENT NO. 1 MAP

ATTACHMENT NO. 2 LEGAL DESCRIPTION OF THE SITE

ATTACHMENT NO. 3 SCHEDULE OF PERFORMANCE

ATTACHMENT NO. 4 AMENDED AND RESTATED CITY DEVELOPER NOTE

ATTACHMENT NO. 5 MODIFICATION OF CITY DEVELOPER DEED OF TRUST

ATTACHMENT NO. 6 HOMEBUYER LOAN AGREEMENT

ATTACHMENT NO. 7 CITY DEVELOPER CC&Rs

ATTACHMENT NO. 8 REQUEST FOR NOTICE OF DEFAULT

ATTACHMENT NO. 9 SCOPE OF DEVELOPMENT

ATTACHMENT NO. 10 CERTIFICATE OF COMPLETION OF CONSTRUCTION

ATTACHMENT NO. 11 CALCULATION OF AFFORDABLE HOUSING COST

ATTACHMENT NO. 12 DEVELOPER SALE CERTIFICATE

## AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**THIS AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT** (the “Agreement”), dated, for identification purposes only, as of May 1, 2013 as amended and restated as of September 8, 2015, is entered into by and among the **CITY OF MORENO VALLEY**, a municipal corporation (“City”), **MORENO VALLEY HOUSING AUTHORITY**, a public body, corporate and politic (“Authority”), and **HABITAT FOR HUMANITY, RIVERSIDE, INC.**, a California nonprofit public benefit corporation (the “Developer”). This Agreement amends and supersedes that certain agreement, entitled “Affordable Housing Agreement”, entered into by and among City, Authority (named therein as the Housing Authority of the City of Moreno Valley) and Developer dated as of May 1, 2013 as approved by Authority by its Resolution No. HA 2013-02 on May 14, 2013 and as approved by City by City Council Resolution No. 2013-31 on May 14, 2013 (the “Original AHA”). Upon execution of this Agreement by the parties hereto, the Original AHA shall be superseded by this Agreement.

### R E C I T A L S

A. Authority is a housing authority duly established and operating as a local housing authority pursuant to the California Housing Authority Law, Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (“Housing Authority Law”).

B. City previously activated a redevelopment agency known as the Community Redevelopment Agency of the City of Moreno Valley (the “Redevelopment Agency”), which operated under the California Community Redevelopment Law, Chapter 1 of Part 1 of Title 24 of the California Health and Safety Code (the “Redevelopment Law”).

C. The Redevelopment Agency and all other redevelopment agencies in the State of California were dissolved pursuant to ABx1 26, as created by the California Legislature in 2011 (the “2011 Dissolution Enactment”). The dissolution of redevelopment agencies was further prescribed by AB 1484, Chapter 26 of Statutes of 2012 (“AB 1484” and, together with the 2011 Dissolution Enactment as amended by AB 1484, the “Redevelopment Dissolution Measure”).

D. Under the Redevelopment Law, the Redevelopment Agency was required to and did devote certain revenues described at Section 33334.2 and 33334.3 of the California Health and Safety Code (“Housing Setaside Moneys”) to activities for the acquisition of property, improvement to property, rehabilitation of properties and preservation of properties which are housing resources benefitting and restored to use by and available to households of limited income. As part of the Redevelopment Agency’s activities using Housing Setaside Moneys, the Redevelopment Agency acquired that certain real property referred to herein as the “Site,” consisting of approximately 1.36 acres, generally located at 24265 Myers Avenue and more particularly described in the “Map” (as defined in Section 1.1).

E. The Site, which consists of land acquired solely with Housing Setaside Moneys, was transferred to Authority by: (i) action by City designating Authority as the housing successor entity pursuant to Section 34176 of the Redevelopment Dissolution Measure, and (ii) action by each of the successor agency to the Redevelopment Agency (the “Successor Agency”) and the Oversight Board to the Successor Agency as created pursuant to Section 34179.6 of the Redevelopment Dissolution Measure.

F. The Site remains subject to requirements that it be used for affordable housing purposes for households of limited income.

G. City is the recipient of moneys from the federal government pursuant to the Neighborhood Stabilization Program (“NSP”) enacted by the United States Congress as part of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, approved July 30, 2008, sometimes referred to as “HERA” and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, approved July 21, 2010, including regulations cited at 75 FR 64322) sometimes referred to as “NSP3”).

H. Developer proposed prior to the approval of the Original AHA to undertake the development of eight (8) single-family houses (each a “House” and collectively, the “Houses”) and together with the corresponding lot, each a “Homebuyer Property” (as defined in Section 1.1) including use of self-help, “sweat equity” to be provided by prospective homebuyers, each of which shall be a Very Low Income Household.

I. Certain moneys made available to City under NSP and NSP3, respectively, are required to be applied in a manner that benefits households of limited income. In connection with the evaluation by City of the proposal by Developer prior to approving the Original AHA, City approved the commitment of certain moneys which had been made available to City under NSP3 up to the “Original NSP Amount” (as defined in Section 1.1 below) shall be used for the development of detached single-family houses to be sold to “Very Low Income Households” at a price which does not exceed “Affordable Housing Cost” (as such capitalized terms are defined in Section 1.1 below) all in accordance with the terms and conditions more particularly set forth in the Original AHA.

J. City agreed under the Original AHA to loan moneys made available to City under NSP up to the “Original NSP Amount” and funds from NSP3 up to the “Original NSP3 Amount”, all as more particularly set forth in this Agreement.

K. In the course of its efforts to perform its obligations under the Original AHA, Developer has encountered various complications and difficulties. Developer represents that additional moneys are necessary to defray costs which have exceeded the amounts which had been anticipated by Developer. Developer represents that it is without financial resources and that without the infusion of such additional NSP moneys as are provided under this Agreement to be infused by City, Developer will be unable to successfully conclude the completion and sale of the Houses to households of limited income.

L. In connection with each sale of a Homebuyer Property by Developer, there will be two loans as to the corresponding Homebuyer Property: (i) the first loan being payable to and administered by City (namely, a “Homebuyer Senior Loan,” as defined below) and (ii) a second loan payable to and administered by Developer (namely, a “Habitat Homebuyer Loan”, as defined below, which Habitat Homebuyer Loan shall be junior and subordinate to the Homebuyer Senior Loan), as further described in the Homebuyer Loan Agreement.

M. Authority’s conveyance of the Site to Developer and Developer’s construction and sale of the Houses on the Site, and the loan of NSP3 Moneys by City to Developer and subsequently to qualified Very Low Income homebuyers pursuant to the terms of this Agreement are in the vital and best interest of Authority and City and the health, safety and welfare of residents of City.

N. Developer has determined that it requires additional time to perform in comparison to the times set forth for performance by Developer under the Original AHA. City is amenable to modify certain times for performance by Developer as more particularly set forth in this Agreement. In addition, Developer and City mutually agree to modify certain other provisions contained in the Original AHA, all as more particularly set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

**1.1 Defined Terms.** As used in this Agreement (and in all other Project Documents, unless otherwise defined), the following capitalized terms shall have the following meanings:

“**Affordability Period**” means a period of forty-five (45) years as more particularly set forth in the City Developer CC&Rs.

“**Affordable Housing Cost**” means that purchase price which would result in a monthly housing cost which does not exceed the product of thirty percent (30%) times fifty percent (50%) of Riverside County median income adjusted for family size appropriate for the House.

“**Amended and Restated City Developer Note**” means a promissory note by Developer to City in the form of Attachment No. 4 to this Agreement. The original principal amount for the Amended and Restated City Developer Note shall be equal to the sum of the Maximum Combined NSP Amount and the City Land Amount.

“**Authority**”, as defined in the first paragraph hereof, means the Moreno Valley Housing Authority, a public body, corporate and politic.

“**Authority Conveyance**” means the conveyance by which Developer acquired title to the Site from Authority. The Authority Conveyance was accomplished on August 15, 2014 by the recording of the Authority Deed among Official Records.

“**Authority Deed**” means a grant deed in the form of Attachment No. 12 to the Original AHA; the Authority Deed was recorded on August 15, 2014 as Document No. 2014-0310288 among Official Records.

“**Authority Executive Director**” means the Executive Director of the Authority or his/her designee or delegate.

“**Back End Ratio**” means the ratio of (i) monthly payments as required on all obligations of a property owner or prospective property owner, including without limitation all housing debt, consumer debt, and any other debt, to (ii) the gross income of the property owner or prospective property owner. Where there is an obligation as to which monthly payments are not expressed as a liquidated amount (but excepting therefrom the Homebuyer Senior Loan), payments are to be imputed based upon the full satisfaction of such obligations over five (5) years (assuming substantially level payments) or less or such other amortization period as may be approved on a case-by-case basis by City.

“**Building Permit**” means the building permit(s) issued by City and required for the Improvements.

“**Calculation of Affordable Housing Cost**” means Attachment No. 11.

“**Certificate of Completion of Construction**” means Attachment No. 10.

“**City**” means the City of Moreno Valley, California.

“**City Construction Amount**” means that amount, up to the Maximum Combined NSP Amount, which City will loan for construction subject to the terms and conditions of this Agreement.

“**City Developer CC&Rs**” means that instrument recorded as Document No. 2014-0310290 among Official Records; a copy of the City Developer CC&Rs is included as Attachment No. 7.

“**City Developer Deed of Trust**” means a deed of trust in the form of Attachment No. 5 to the Original AHA.

“**City Developer Escrow**” is described in Section 2.2.

“**City Developer Land Amount**” or “**Developer Purchase Price**” means the sum of Five Hundred Thousand Dollars (\$500,000.00).

“**City Developer Loan**” has the meaning set forth in Section 2.1.1.

“**City Developer Loan Amount**” means the sum of the City Construction Amount and the City Loan Amount.

“**City Developer Title Policy**” means a lender’s policy of title insurance issued by the Title Company in connection with the City Developer Loan, respectively, which: (i) is based upon the principal amount of the City Developer Loan, respectively; and (ii) insures the City Developer Deed of Trust as a lien in conformity with the Designated City Developer Lien Priorities.

“**City Homebuyer Covenants**” means an instrument in the form of Exhibit “H” to the Homebuyer Loan Agreement.

“**City Homebuyer Loan Policy**” is defined in Section 2.7.7.

“**City Manager**” means the city manager of City or his/her designee.

“**Condition of Title**” is defined in Section 2.3 hereof.

“**Conditions Precedent**” shall have the meaning set forth therefor in Section 2.1.3 hereof.

“**Conditions to Sale to Program Participant**” means those matters set forth in Section 6.4.

“**County**” means the County of Riverside, California.

“**Current Market Appraised Value**” means the value of a foreclosed home or residential property that is established through an appraisal made in conformity with the appraisal requirements

of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) at 49 CFR.24.103 and completed within sixty (60) days prior to an offer made for the property by a grantee, subrecipient, developer, or individual homebuyer. If the appraisal is completed greater than sixty (60) but less than one hundred twenty (120) days prior to an offer, a updated valuation will be required, if the appraisal is completed greater than one hundred twenty (120) days prior to an offer it is considered expired and a new appraisal will required. Per NSP regulations, the sales price is determined as the lesser of: a) Total Development Costs, or b) the market appraised value.

“**Date of Agreement**” means May 1, 2013 (notwithstanding that the Agreement is amended and restated as of September 8, 2015).

“**Datedown Costs**” shall have the meaning set forth therefor in Section 2.2 of this Agreement.

“**Datedown Policy**” shall have the meaning set forth therefor in Section 2.2 of this Agreement.

“**Designated City Developer Lien Priorities**” is defined in Section 2.1.1.

“**Designated City Homebuyer Lien Priorities**” is defined in Section 2.7.6.

“**Developer,**” as defined in the first paragraph hereof, means Habitat for Humanity, Riverside, Inc., a California nonprofit public benefit corporation.

“**Developer Fee**” means an amount payable by City to Developer, not to exceed Three Hundred Nine Thousand Sixty Six Dollars and Seventy Two Cents (\$309,066.72), as its fee in connection with the development of the Houses and the sale of such Houses to the Initial Homebuyers in conformity with this Agreement. The Developer Fee for each House so sold shall be Thirty Eight Thousand Six Hundred Thirty Three Dollars and Thirty Four Cents (\$38,633.34).

“**Developer Homebuyer Loan Policy**” is defined in Section 2.7.7.

“**Developer Sale Certificate**” means a certificate in the form of Attachment No. 12.

“**Drainage and Water Quality Easements**” means all easements reserved to Developer under the Tract Map.

“**Eligible Homebuyer**” means a household which (i) is a Very Low Income Household”, (ii) has satisfied the Habitat Work Qualifications, as certified by Developer; and (iii) has satisfactorily completed a Homebuyer Training Program and such completion is certified by each of Developer and by a HUD-certified homebuyer education counselor, which must be evidenced by the delivery of a Homebuyer Training Certificate; (iv) is acquiring a House for owner occupancy by such household at a price which does not exceed Affordable Housing Costs and with a Back End Ratio that does not exceed forty three percent (43%) of such household’s income; and (v) has executed all those instruments to be executed by each Initial Homebuyer as required by this document, including without limitation the Homebuyer Loan Agreement and the exhibits thereto.

“**Eligible Use E**” has the meaning established therefor in the HERA Act §2301(c)(3)(E), namely the activity to redevelop demolished or vacant properties. HUD is requiring the identification of NSP activity used to carry out the project. In this case it is Eligible Use E- Redevelopment.



“**Escrow Holder**” means First American Title Company of California or another escrow holder designated by City.

“**Event of Default**” has the meaning set forth in Section 7.1.

“**FIRPTA**” means the Foreign Investment in Real Property Transfer Act.

“**First Amendment Date**” means September 8, 2015.

“**General Contractor**” means the general contractor hired by Developer to engage and supervise the subcontractors in the performance and completion of the construction of the Improvements. The General Contractor shall be reasonably acceptable to and approved by the City Manager, in his reasonable discretion; provided, Developer was pre-approved under the Original AHA to act as the General Contractor for the development of the Improvements. The parties acknowledge that the General Contractor will not be performing actual construction work for any portion of the Development, but instead shall hire Subcontractors (after competitive bidding) who shall be reasonably approved by the City Manager.

“**Governmental Fees**” means fees charged by governmental agencies exercising regulatory authority over the Improvements.

“**Governmental Requirements**” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, Authority, City, or any other political subdivision in which the Site is located, and of any other political subdivision, City or instrumentality exercising jurisdiction over City, Developer or the Site, including without limitation those matters enumerated as Rules and Regulations in this Agreement.

“**Habitat for Humanity BMP Maintenance Plan**” means Exhibit B to the Scope of Development.

“**Habitat Homebuyer Deed**” means a deed substantially in the form of Exhibit “K” to the Homebuyer Loan Agreement.

“**Habitat Homebuyer Loan**” means a loan by Developer to an Initial Homebuyer in the principal amount of [to come: \$245,000 less the sum of the down payment and the original principal amount of the Homebuyer Senior Note] with an interest rate of zero percent and having a term of forty five (45) years; provided that a different principal amount may be authorized by the express written approval of the City Manager following determination by Authority staff that the price at which the corresponding unit is sold to a Program Participant does not exceed Affordable Housing Cost; provided that in no event shall the original principal amount of the Habitat Homebuyer Loan exceed the amount of the Homebuyer Senior Loan.

“**Habitat Homebuyer Deed of Trust**” means a deed of trust securing repayment of a Habitat Homebuyer Loan; each Habitat Homebuyer Deed of Trust shall be junior and subordinate to the Homebuyer Senior Deed of Trust recorded as to that property.

“**Habitat Homebuyer Note**” means a promissory note to secure the Habitat Homebuyer Loan; the form of the Habitat Homebuyer Note is set forth as Exhibit I to the Homebuyer Loan Agreement.

“**Habitat Homebuyer Purchase and Sale Agreement**” means an agreement in the form of Exhibit G to Homebuyer Loan Agreement, together with such amendments, if any, as may be approved by the City Manager.

“**Habitat Work Qualifications**” means that the corresponding Program Participant has worked at the direction of Developer on an uncompensated, volunteer basis for not less than (i) five hundred (500) hours in the case of a household affiliated by marriage or civil union, or (ii) two hundred fifty (250) hours in the case of each single (head of household) person constructing homes for occupancy of households other than Participant.

“**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, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903), (xi) Methyl-tert Butyl Ether or (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*

“**Home Owner BMP Maintenance Plan**” means Exhibit A to the Scope of Development.

“**Homebuyer Escrow Holder**” means Capree Escrow or another escrow holder designated by City.

“**Homebuyer Loan Agreement**” means an agreement in the form of Attachment No. 6 hereof.

“**Homebuyer Price**” means that amount determined by City upon receipt of request therefor by Developer to represent the purchase price for a Homebuyer Property to be paid by the corresponding purchaser. Upon conferring with Developer, the Homebuyer Price shall not, in any case, exceed Affordable Housing Cost for a Very Low Income Household as determined by City.

“**Homebuyer Property**” means a lot corresponding to each House as designated by the Parcel Map.

“**Homebuyer Purchase and Sale Agreement**” has the meaning set forth in Section 6.1.



“**Homebuyer Purchase Escrow**” has the meaning set forth in Section 2.7.

“**Homebuyer Senior Deed of Trust**” means a deed of trust substantially in the form of Exhibit C to the Homebuyer Loan Agreement to be executed by each Program Participant and recorded as a first deed of trust against the corresponding Homebuyer Property.

“**Homebuyer Senior Loan**” means a senior loan to each Initial Homebuyer as more fully described in the Homebuyer Loan Agreement.

“**Homebuyer Senior Note**” means a promissory note substantially in the form of Exhibit “I” to the Homebuyer Loan Agreement to be executed by each Program Participant and deliver to City in connection with each sale of a Homebuyer Property and/or House.

“**Homebuyer Training Certificate**” means a certificate affirming the completion by the corresponding homebuyer of a Homebuyer Training Program. The Homebuyer Training Certificate must be valid at the time the prospective purchaser is determined to an Eligible Homebuyer.

“**Homebuyer Training Program**” means classroom-based, homebuyer education program conducted by a HUD-certified homebuyer education counselor consisting of not less than eight (8) hours of classroom instruction.

“**House**” means each single family detached house to be constructed by Developer upon the Site, all as more particularly described in Section 3.1 hereof and in the Scope of Development.

“**HUD**” means the United States Department of Housing and Urban Development.

“**Improvements**” means all of the improvements described in the Scope of Development.

“**Initial Homebuyer**” means the initial purchaser of each Homebuyer Property from Developer.

“**Legal Description of the Site**” means Attachment No. 1.

“**Lender’s Title Policies (Homebuyer)**” is defined in Section 2.4.2.

“**Lender’s Title Policy (Developer)**” is defined in Section 2.4.

“**Low Income Households**” means households earning not greater than eighty percent (80%) of Median Income for the Area as set forth in Health and Safety Code Section 50079.5.

“**Map**” means Attachment No. 1 hereof.

“**Maximum Combined NSP Amount**” means the sum of the Maximum NSP Amount and the Maximum NSP3 Amount, namely Two Million Seven Hundred Ninety One Thousand Twenty Six Dollars (\$2,791,026.00).

“**Maximum NSP Amount**” means moneys equal to Eight Hundred Twenty Seven Thousand Dollars (\$827,000.00) available to City from NSP.

**“Maximum NSP3 Amount”** means moneys equal to One Million Three Hundred Thousand Dollars (\$1,300,000.00) available to City from NSP3.

**“Median Income for the Area”** means the median income for the County as determined by City under Health and Safety Code Section 50052.5 and applicable regulations, if any, of the State of California.

**“Modification of City Developer Deed of Trust”** means an instrument in the form of Attachment No. 5 to this Agreement.

**“NSP”** is defined in Recital G hereof.

**“NSP3”** is defined in Recital G hereof.

**“Notice of Affordability Restrictions”** means Exhibit “E” to the Homebuyer Loan Agreement.

**“Official Records”**, unless the context otherwise requires, means the official land records of the County Recorder of the County.

**“Original AHA”** is defined in the first paragraph of this Agreement.

**“Original City Developer Deed of Trust”** means that certain deed of trust executed by Developer as trustor to City as beneficiary as recorded on March 19, 2014, among Official Records as Document No. 2014-0310289.

**“Original City Developer Loan”** has the meaning established therefor in Section 2.1.2.

**“Original City Loan Policy”** means that lender’s policy of title insurance as given by Stewart Title Company, Policy No. M-9302-004180042, dated as of August 14, 2014) as delivered to City after the recording of the Original City Developer Deed of Trust.

**“Original Combined NSP Amount”** means the sum of the Original NSP Amount and the Original NSP3 Amount, namely Two Million One Hundred Thirty Seven Thousand Dollars (\$2,137,000.00).

**“Original NSP Amount”** means moneys equal to Eight Hundred Twenty Seven Thousand Dollars (\$827,000.00) available to City from NSP.

**“Original NSP3 Amount”** means moneys equal to One Million Three Hundred Thousand Dollars (\$1,300,000.00) available to City from NSP3.

**“Original City Developer Note”** means that certain promissory note dated as of March 19, 2014 in the original principal amount of Two Million Six Hundred Twenty Seven Thousand Dollars (\$2,627,000.00) by Developer as maker to City as holder as executed and delivered by Developer to City under the Original AHA.

**“Owner’s Title Policy (Developer)”** is defined in Section 2.4.

**“Owner’s Title Policy (Homebuyer)”** is defined in Section 2.7.7.

“**Parcel Map**” means that certain parcel map which was recorded on September 15, 2014 as Document No. 2014-0348721 among Official Records. The Parcel Map divided the Site into eight (8) lots.

“**Plans**” means those building plans approved by City regarding the development of the Improvements and any related off sites.

“**Pricing Protocol**” has the meaning established therefor in Section 2.1.4.

“**Program Participant**” means a household which is mutually approved by each of Developer and City for purchase of a Homebuyer Property, applying criteria including: (i) the household is a Very Low Income Household as confirmed by the City Manager upon receipt of evidence from Developer and a prospective homebuyer; (ii) the household has executed and deposited into escrow for delivery to City upon closing of the Homebuyer Loan Agreement, the Homebuyer Senior Note, the Homebuyer Senior Deed of Trust (with that deed of trust to be recorded as provided in the Homebuyer Loan Agreement), the Habitat Homebuyer Note, and the Habitat Homebuyer Deed of Trust; (iii) the household has not held an ownership interest in a residence for at least three (3) years preceding the purchase of the corresponding Homebuyer Property; (iv) the purchase price to the homebuyer, as confirmed by City, does not exceed Affording Housing Cost; (v) Developer has determined homebuyer income eligibility in accordance 24 CFR Part 5 and has documented to City (and upon request therefor, HUD) the income of all persons acquiring property from Developer under the NSP and this Agreement. Source documentation evidencing annual income shall include, but is not limited to verification of employment, wage statements, bank statements, unemployment compensation and other documents to confirm annual household income in accordance with the income guidelines established by HUD for the qualifying year; and (vi) Developer has certified to City that the homebuyer has satisfied the Habitat Work Qualifications.

“**Program Participant Documents**” means, the Homebuyer Loan Agreement, the Homebuyer Senior Deed of Trust, the Homebuyer Senior Note, the Habitat Homebuyer Deed of Trust, the Habitat Homebuyer Note, the Homebuyer Senior Note and the City Developer CC&Rs.

“**Project Documents**” means, collectively, this Agreement, the City Developer CC&Rs, the City Developer Note (and, upon delivery thereof by Developer to City, the Amended and Restated City Developer Note), the City Developer Deed of Trust (and, upon recordation thereof, the Modification of City Developer Deed of Trust), the Homebuyer Senior Note, the Habitat Homebuyer Note, the Habitat Homebuyer Deed of Trust and the Homebuyer Senior Deed of Trust.

“**Proposed Transferee’s Application**” means a form of application to be prepared by Developer and reviewed by City which will include all information necessary for the verification of eligibility of a household to purchase the corresponding Homebuyer Property.

“**Redevelopment Agency**”, as defined in Recital B hereof, means the former Community Redevelopment Agency of the City of Moreno Valley.

“**Redevelopment Plan**” means the Redevelopment Plan for the Moreno Valley Redevelopment Project, adopted by ordinance of the City Council of the City of Moreno Valley, as amended.

“**Redevelopment Project**” means the Moreno Valley Redevelopment Project, as described in the Redevelopment Plan.

“**Redevelopment Project Area**” means that area designated as the project area in the Redevelopment Plan.

“**Request for Notice of Default**” means Attachment No. 8 hereof.

“**Rules and Regulations**” means each of: (i) Health and Safety Code Sections 50052.5, 50053 and 50105; (ii) the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*); (iii) Community Development Block Grant (CDBG) program as authorized under the Housing and Community Development Act of 1974, 42 U.S.C. 5301 *et seq.* (“HCD Act”) and the regulations promulgated thereunder at 24 C.F.R. 570; (iv) The Housing and Economic Recovery Act of 2008 (Public Law 110-289) (“HERA”); (v) The American Reinvestment and Recovery Act of 2009 (Public Law 111-005) (the “Recovery Act”); (vi) Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 [Docket No. FR-5321-N-01] (the “NSP2 NOFA”); (vii) the Community Development Block Grant (CDBG) program as authorized under the Public Housing and Community Development Act of 1974, 42 U.S.C. 5301 *et seq.* (“HCD Act”) as amplified by regulations set forth at 24 C.F.R. 570; (viii) the Housing and Economic Recovery Act of 2008 (Public Law 110-289) (“HERA”); (ix) the American Reinvestment and Recovery Act of 2009 (Public Law 111-005) (the “Recovery Act”); (x) the Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 [Docket No. FR 5321-N-01] (the “NSP2 NOFA”); (xi) the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 C.F.R. Part 58; (xii) City’s Final Neighborhood Stabilization Program as amended by Substantial Amendment to the City of Moreno Valley’s 2008-2009 Annual Action Plan, as adopted November 25, 2008; (xiii) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010), including regulations cited at 75 FR 64322 (“NSP3”); (xiv) the Notice of Funding Availability (NOFA) for NSP3 (the “NSP3 NOFA”); (xv) the Flood Disaster Protection Act of 1973 (P.L. 93-2234) for compliance in regard to the sale, lease, or other transfer of land acquired, cleared or improved under the terms of this Agreement; (xvi) the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*); (xvii) the Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et. seq.*, as amended 1318 relating to the inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; (xviii) the Environmental Protection Agency Regulations pursuant to 40 C.F.R., Part 50, as amended; (xix) Labor Standards (29 CFR Parts 3.5 and 5a) pertaining to contracts and applicable requirements of the regulations of the Division of Labor; (xx) the Drug Free Workplace Act of 1988; (xxi) Public Law 101-144, Section 519 (the 1990 HUD Appropriation Act); (xxii) the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470); (xxiii) federal regulations requiring that minority and women’s businesses be afforded opportunities to participate in the performance of this Agreement; (xxiv) as to conflicts of interest: (a) Developer agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following: (1) Developer shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds; (2) no employee, officer or agent of Developer shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved; (3) no covered persons who exercise or have exercised any functions or responsibilities with respect to NSP-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a

financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the NSP-assisted activity, or with respect to the proceeds from the NSP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of City, Developer, or any designated public agency; (xxv) Developer shall comply with federal regulations concerning lobbying; (xxvi) 42 U.S.C. Section 5309 (nondiscrimination); and (xxvii) to the extent applicable, including a Section 3 Clause in each construction contract.

“**Schedule of Performance**” means Attachment No. 3 hereof.

“**Scope of Development**” means Attachment No. 9 hereof.

“**Section 3**” means and refers to Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u, as amended. City has prepared a Section 3 “checklist” and other forms related to Section 3 compliance; and as provided by City to Participant, its General Contractor, Subcontractors, or other contractor(s) or subcontractor(s), as applicable, such forms shall be utilized in all contracts and subcontracts to which Section 3 applies.

“**Section 3 Clause**” means the language, set forth below, which is required to be included in each and every construction contract entered into by Participant, the General Contractor, each Subcontractor and/or any other contractor(s) or subcontractor(s), as applicable, for the development or rehabilitation of the Development. For purposes of this Section 3 Clause and compliance therewith, whenever the word “contractor” is used it shall mean and include, as applicable, Participant, General Contractor, any and all Subcontractors, and any other contractor(s) and subcontractor(s) performing work on the Project.

Participant hereby acknowledges and agrees to take all responsibility for compliance with all Section 3 Clause federal requirements and further acknowledges and agrees that compliance with all Section 3 Clause requirements by Participant, the General Contractor, all Subcontractors, and/or other contractor(s), subcontractor(s), and other agents, is the primary obligation of Participant. Participant shall provide or cause to be provided to its General Contractor and each Subcontractor, and each of its other contractor(s), subcontractor(s) and agents, a checklist for compliance with the Section 3 Clause federal requirements, to obtain from the General Contractor, each Subcontractor, and other contractor(s), subcontractor(s), and agents, all applicable items, documents, and other evidence of compliance with the items, actions, and other provisions within the checklist, and to submit all such completed Section 3 Clause documentation and proof of compliance to the City Manager.

The particular text to be utilized in any and all contracts of the General Contractor or any Subcontractor doing work covered by Section 3 shall be in substantially the form of the following Section 3 Clause, as reasonably determined by City, or as directed by HUD or its representative, and shall be executed by the applicable contractor under penalty of perjury:

“(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons (inclusive of Very Low



and Low Income Persons, Very Low and Low Income Households, and Very Low and Low Income Tenants served by the Project), particularly persons who are recipients of HUD assistance for housing.

“(ii) The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

“(iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of notices in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

“(iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

“(v) The contractor will certify that any vacant employment positions, including training positions, that are filled (a) after the contractor is selected but before the contract is executed, and (b) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 C.F.R. Part 135.

“(vi) Noncompliance with HUD’s regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

“(vii) With respect to work performed in connection with Section 3 covered Indian Housing assistance, section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible, (a) preference and opportunities for training and employment shall be given to Indians, and (b) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).”

**After the foregoing Section 3 Clause, Participant shall add the signature block of the General Contractor, Subcontractor, or other contractor(s) and subcontractor(s), as applicable, and shall add the following text immediately above the signature block:**

**“The contractor/provider by this his signature affixed hereto declares under penalty of perjury that contractor has read the requirements of this Section 3 Clause and accepts all its requirements contained therein for all of his operations related to this contract.”**

**“Site”** means that property so designated in the Legal Description of the Site and the Map.

**“Subcontractor”** and **“Subcontractors”** means, individually and collectively, one or more subcontractors hired by Developer’s General Contractor for the Improvements to perform and complete, or to engage and supervise others to perform and complete, the construction of the Improvements. Each of the Subcontractors shall be selected after competitive bidding, and City shall have every reasonable right and opportunity to observe and review all material stages of such competitive bidding process, including a right to review the invitation to bidders, each bid package, each responsive bid form, each submitted bid package and the right to be present when each bid is opened by Developer and/or the General Contractor. Developer shall submit to City information regarding the entity serving as the Subcontractor for any portion of the construction of the Improvements, including compliance with plans approved by City and the obtaining by Developer of all required licenses, certifications, insurance, etc., as reasonably requested by the City Manager.

**“Sweat Equity Amount”** shall be deemed to be equal to Thirty Thousand Dollars (\$30,000.00) per House.

**“Title Company”** means First American Title Company of California or another title insurer designated by City.

**“Total Development Costs”** means all HUD-approved eligible costs including, but not limited to planning, administration, site acquisition, relocation, demolition, site remediation, site costs (except where noted), dwelling unit hard costs including construction and equipment, interest and carrying charges, builder’s overhead and profit, on-site streets and utilities from the street, finish landscaping, a contingency allowance, insurance premiums, off-site facilities including community buildings, and initial operating period deficit reserves.

**“Tract Map”** means that certain map regarding tract number 36598 as recorded among Official Records as Document No. 2014-0348721. The Tract Map is deemed incorporated herein by reference.

**“Very Low Income Households”** means households earning not greater than fifty percent (50%) of Median Income for the Area as set forth in Health and Safety Code Section 50105.

**1.2 Singular and Plural Terms.** Any defined term used in the plural in this Agreement or any Project Document shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

**1.3 References and Other Terms.** Any reference to this Agreement or any Project Document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments

and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation.”

**1.4 Exhibits Incorporated.** All attachments and exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

## **2. DISPOSITION OF THE SITE**

**2.1 Sale of the Site.** As of the Date of Agreement, Authority held fee title to the Site.

Developer warrants and represents that prior to the Authority Conveyance Developer undertook and completed at its expense an investigation of the Site, including without limitation condition of title, the presence of any hazardous materials and other surface and subsurface conditions, and the suitability of the Site for the Improvements required pursuant to this Agreement. Developer selected the Site and determined that it is suitable for all development and uses as provided for pursuant to this Agreement.

The purchase price for the sale of the Site by Authority to Developer, subject to all of the terms and conditions of this Agreement, shall be Five Hundred Thousand Dollars (\$500,000.00) (the “Developer Purchase Price”). The Original AHA provided that, at Closing, Developer could defer payment in cash of the Developer Purchase Price, provided that Developer executes and provides to the Escrow Holder for delivery to City all of the following for the Site, with all documents duly executed and the City Developer Deed of Trust in recordable form: (i) the City Developer Deed of Trust; and (ii) the City Developer Note; subject to the delivery of such instruments at Closing. The City Developer Deed of Trust was recorded on August 15, 2014 as Document No. 2014-0310289 among Official Records. The City Developer Note was executed by Developer and was delivered to City immediately following the recording of the City Developer Deed of Trust.

**2.1.1 City Developer Loan.** Authority and City have entered into an agreement or will enter into an agreement under which Authority assigns its rights to receive the Developer Purchase Price to City. Subject to the prior satisfaction of the Conditions Precedent, City agrees to defer receipt of the Developer Purchase Price. In addition, City has loaned additional moneys as the City Construction Amount to Developer as more particularly reflected in the Original City Developer Note (which loan is referred to as the “Original City Developer Loan”). In connection with escrow, the recording of documents were required to be accomplished in the following order (the “City Developer Designated Recording Order”): the Authority Deed; then the City Developer CC&Rs; then the City Developer Deed of Trust, with the Authority Deed having first priority, then the City Developer CC&Rs, then the City Developer Deed of Trust (the “Designated City Developer Lien Priorities”). Recordation was accomplished under the Original AHA in conformity with the foregoing portion of this Section 2.1.1.

Subsequent to the approval of the Original AHA, Developer experienced significant difficulties in connection with development of the Site, the provision of offsite infrastructure improvements necessary for the lawful occupancy of the Houses, and in connection with other aspects of its undertakings. In view of such difficulties, as well as what may have been inaccurate economic assumptions and site condition assumptions pertaining to existing infrastructure used by Developer when the Original AHA was approved, City has agreed to increase the amount of the City Developer Loan from that amount provided therefor in the Original AHA (namely, Two Million Two



Hundred Sixty Seven Thousand Dollars (\$2,267,000.00))(the “Original AHA Loan Amount”) to the sum of Three Million Two Hundred Ninety One Thousand Twenty Six Dollars (\$3,291,026.00)(the “Revised Loan Amount”); the Revised Loan Amount, which is inclusive of the Original AHA Loan Amount, thus provides for an increase of Six Hundred Sixty Four Thousand Dollars (\$664,026.00) in the amounts loaned by City to Developer. Disbursement of the Revised Loan Amount is governed by Section 2.1.2 of this Agreement. Disbursement of the Revised Loan Amount will be handled outside of escrow and is a matter with which escrow holder need not be concerned excepting only to the extent, if any, expressly provided to contrary effect in supplemental escrow instructions. The loan of the Original City Loan Amount as increased to the Revised Loan Amount is referred to herein as the City Developer Loan.

**2.1.2 Protocol for Disbursement of the Revised Loan Amount.** The amount of Two Million Two Hundred Twenty Three Thousand Eight Hundred Twenty Dollars and Ninety Six Cents (\$2,223,820.96)(the “Prior Disbursement Amount”) has been disbursed by City to Developer or to third parties for the benefit of Developer prior to the First Amendment Date and includes the value of the Site in an unimproved state. The remainder of the Revised Loan Amount shall be subject to disbursement to or for the benefit of Developer as follows:

City shall make available: (i) to Developer the amount of One Million Sixty Seven Thousand Two Hundred Five Dollars and Four Cents (\$1,067,205.04), inclusive of Developer Fee, in installments based upon the progress toward completion of the Improvements, with amounts to be disbursed based upon the degree of completion up to costs incurred as determined in good faith by the City Manager; such determinations are solely for the use of City in implementing its objectives pursuant to this Agreement and are not to be relied upon by any third party; and (ii) the City Fee Amount, which City Fee Amount shall be deemed disbursed to City on behalf of Developer at such times as City would normally collect the corresponding fees. Prior to each disbursement of any portion of the Revised Loan Amount, Developer shall submit to City an “Application for Disbursement” (more commonly known as a “Draw Request”) which shall include:

(i) A written, itemized statement, signed by a representative of Developer which sets forth: (A) a description of the work performed, material supplied and/or costs incurred or due for which disbursement is requested; and (B) the total amount incurred, expended and/or due for the requested disbursement. All moneys applied for and disbursed pursuant to this Section 2.1.2 shall be applied only for the Improvements and the statement(s) by the representative of Developer shall so affirm. Disbursements may be used only to defray the cost of work performed on the Improvements, and only where such work is performed by (and disbursements are made to) third parties not related or connected to Developer;

(ii) Copies of billing invoices, statements, receipts and other documents evidencing the total amount expended, incurred or due for any requested disbursement;

(iii) Mechanics lien waivers including: (i) a Conditional Waiver and Release Upon Progress Payment (California Civil Code Section 3262(d)(1)) for itself and each contractor covered by such Request Payment, (ii) an Unconditional Waiver and Release Upon Progress Payment (California Civil Code Section 3262(d)(2)) for itself and each of its contractors covering the full amount of all previous payments made to Developer, and (iii) an Unconditional Waiver and Release Upon Final Payment (California Civil Code Section 3262(d)(4)) for its contractors who have completed their work and for whom Developer has received full payment; and

(iv) A statement that the percentage and/or stage of construction corresponding to the Application for Disbursement has been substantially completed and substantially conforms to the Plans.

Subject to satisfaction of the requirements of this Section 2.1.2, City will endeavor to make payments within ten (10) days after the submittals required pursuant to this Section 2.1.2 are fully accomplished, review by the City Manager has been completed, and the City Manager has had a reasonable opportunity to review the stage of completion. After the approval of this Agreement by City, further approval by the City Council shall not be required to authorize the disbursement of moneys pursuant to this Section 2.1.2.

The Developer Fee as to the completion of each House and sale to an Initial Homebuyer in conformance with this Agreement shall be disbursed by City to Developer not later than thirty (30) days after the conveyance of the corresponding House to an Initial Homebuyer in strict conformance with this Agreement.

Notwithstanding any provision of this Agreement to contrary effect, in the event an Event of Default has occurred, City shall, at its election, cease to make any disbursements to Developer, including without limitation the Developer Fee. City may thereafter, at its discretion, determine whether an Event of Default may be or has been cured, in which event City may at its option recommence disbursements; provided that the foregoing shall be without prejudice as to the rights of City and authority to enforce this Agreement, terminate this Agreement, or pursue legal and/or equitable remedies.

**2.1.3 Conditions Precedent.** “Conditions Precedent” means all of (i) those matters which constituted the Conditions Precedent as defined by Section 3.1 of the Original Agreement; (ii) execution and delivery by Developer and City of each of the Amended and Restated City Developer Note and the Modification of City Developer Deed of Trust with the latter having been duly recorded among the Official Records; (iii) delivery to City, at Developer’s expense, of the Datedown Policy; (iv) receipt by City of a complete Developer Sale Certificate with Homebuyer Training Certificate as to the prospective sale; (v) City, upon consultation with Developer, shall have determined the respective amounts of the Homebuyer Senior Note and the Habitat Homebuyer Note in accordance with the Pricing Protocol, and (vi) City shall have approved all documents to be used in connection with the sale of the corresponding House, including without limitation the purchase and sale agreement, the deed, any covenants to be recorded as to the corresponding lot, and any instruments (including without limitation promissory notes and deeds of trust) pertaining to the Homebuyer Senior Loan and the obligation to be evidenced by the Habitat Homebuyer Note.

**2.1.4 Pricing Protocol.** The purchase price which may be charged a homebuyer under this Agreement is constricted by requirements and limitations applicable to the particular funding sources used by the Former Agency in acquiring land, limitations applicable to Authority and limitations under NSP requirements, including without limitation the Rules and Regulations. The price of each House shall not exceed the sum of Two Hundred Forty Five Thousand Dollars (\$245,000.00). Not less than thirty (30) days prior to any closing, Developer shall deliver to City a complete application for each prospective homebuyer, including evidence as to household size and income (including tax returns), as well as current employment and assets as to all members of the household and a Developer Sale Certificate. City will, after confirming with Developer, determine the amount of each of the Homebuyer Senior Loan and the Habitat Homebuyer Loan as to each sale.

The foregoing shall constitute the “Pricing Protocol.” Developer shall cooperate fully with City regarding the implementation of this Section 2.1.4.

**2.2 Escrow.** The parties shall open an escrow (the “Modification Escrow”) with the Escrow Holder within fifteen (15) days after the First Amendment Date, for the recordation of the Modification of City Developer Deed of Trust and the execution and delivery of the Amended and Restated City Developer Note. Authority, City and Developer agree to execute such supplemental escrow instructions as may be reasonably required to implement this Section 2.2. Developer shall arrange for and cause the Title Company to issue a date down on the Original City Loan Policy to reflect the increase in loan amount under the Amended and Restated City Developer Note and the Modification of City Developer Deed of Trust. The datedown of the Original City Loan Policy shall: (i) reflect an increased principal loan amount conforming to the Amended and Restated City Developer Note and the Modification of City Developer Deed of Trust; and (ii) reflect a condition of title the same as that set forth in the Original City Loan Policy (or with such additional exceptions, if any, as may be approved by City acting at its sole and absolute discretion; the datedown or reissuance of a lender’s title policy consistent with the foregoing shall constitute the “Datedown Costs”; a revised policy, datedown of the Original City Lender’s Policy or a new lender’s policy conforming with the foregoing constitutes the “Datedown Policy”). Developer shall be responsible to pay any premium, fees, costs and expenses for the datedown. Developer shall additionally pay, at its cost, any amounts necessary to effect recording, escrow charges, and any costs necessary to cause the condition of title for the Datedown Policy to conform to those conditions set forth in the Original City Loan Policy.

**2.3 Lobbying.** Developer hereby certifies that: (i) no Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; (ii) if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and (iii) it will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Developers shall certify and disclose accordingly as follows: Lobbying Certification: (i) this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure; and (ii) in the event that legal matters arise pertaining to this Agreement or the use of NSP funds, legal venue shall be in the Ninth Circuit Court or the Superior Court for the County of Riverside.

**2.4 Title Insurance, Disposition to Developer.** Substantially concurrently with recordation of the Authority Deed, there was issued to Developer a CLTA owner’s policy of title insurance (“Owner’s Title Policy (Developer)”), issued by Stewart Title of California, Inc. insuring

that the title to the Site is vested in Developer in the condition required by the Original AHA. The Title Company provided City with a copy of the Owner's Title Policy. The Owner's Title Policy was based upon the Purchase Price.

In connection with the recording of the City Developer Deed of Trust, Stewart Title of California, Inc. provided to City an ALTA lender's policy of title insurance for the City Developer Deed of Trust, based upon the face amounts of the City Developer Note in conformity with the Designated City Developer Lien Priorities, and subject only to encumbrances, if any, approved in writing by the City Manager in that lender's policy of title insurer by Stewart Tile Company, Policy No. M-9302-004180042, dated as of August 15, 2014, the "Original Lender's Title Policy").

**2.5 Repayment.** The entire balance due under the Original City Developer Note, and upon execution and delivery thereof the Amended and Restated City Developer Note, shall be paid to City, or otherwise satisfied as provided below, upon the first to occur of: (i) the sale or other conveyance of the Site or portion thereof contrary to the Original AHA; (ii) the uncured default of Developer under the Original AHA, the Original City Developer Note or the Original City Developer Deed of Trust; (iii) twenty-four (24) months after the Date of Agreement; (iv) the sale or other conveyance of the Site or portion thereof except to the extent each Homebuyer Property is conveyed to Initial Homebuyers in conformity with Sections 6.1 to 6.4 hereof; or (v) the uncured default of Developer under the Original AHA, the Original City Developer Note or the Original City Developer Deed of Trust. Following the recording of the Modification of City Developer Deed of Trust and execution by Developer and delivery to City of the Amended and Restated City Developer Note, the entire balance due under the Amended and Restated City Developer Note shall be paid to City, or otherwise satisfied as provided below, upon the first to occur of: (i) the sale or other conveyance of the Site or portion thereof contrary to this Agreement; (ii) the uncured default of Developer under this Agreement, the Amended and Restated City Developer Note or the Original City Developer Deed of Trust as modified by the Modification of City Developer Deed of Trust; (iii) twenty-four (24) months after the Date of Agreement; (iv) the sale or other conveyance of the Site or portion thereof except to the extent each Homebuyer Property is conveyed to Initial Homebuyers in conformity with Sections 6.1 to 6.4 hereof; or (v) the uncured default of Developer under this Agreement, the Amended and Restated City Developer Note or the Original City Developer Deed of Trust as modified by the Modification of City Developer Deed of Trust. Notwithstanding the foregoing portion of this Section 2.5, in the event no defaults have occurred, City shall provide to the Escrow Holder its release and reconveyance from the Original City Developer Deed of Trust as modified by the Modification of City Developer Deed of Trust in connection with the sale of the Site by Developer to the Initial Homebuyer at Affordable Housing Cost accomplished in strict conformity with Section 6.1 hereof.

**2.6 Assumption.** The Original City Developer Note and, upon execution and delivery thereof, the Amended and Restated City Developer Note, shall not be assignable or assumable by successors and assigns of Developer without the prior written consent of City, which consent may be withheld in City's sole and complete discretion.

**2.7 Homebuyer Escrows.** Upon Developer having received City approval of an Initial Homebuyer (or another Program Participant), Developer shall open an escrow as to the corresponding Homebuyer Property (each one a "Homebuyer Escrow") with the Escrow Holder. City and Developer agree to execute such escrow instructions as may be reasonably required to implement this Section 2.7 (including without limitation Section 2.7.7 hereof) with respect to each

such escrow. The process set forth in this Section 2.7 as well as Sections 2.8 and 2.9, will be repeated as to each purchaser of a Homebuyer Property (or any portion of the Site).

**2.7.1 Costs of Escrow.** Developer shall pay, or shall arrange for Developer and the purchaser to pay, their respective portions of the premium for the title policies as set forth in Section 2.7 hereof, Developer shall pay for the documentary transfer taxes, if any, and Developer shall pay, or shall arrange for Developer and the purchaser to each pay one-half of all other usual fees, charges, and costs which arise from the corresponding Homebuyer Escrow. No costs shall be borne by City or Authority.

**2.7.2 Escrow Instructions.** This Section 2.7, including all subparts hereof, constitutes the escrow instructions of Developer, City and, once executed, the purchaser (which shall be an Initial Homebuyer in each case), and the Escrow Holder to whom these instructions are delivered is hereby empowered to act under this Section 2.7. Insurance policies for fire or casualty are not to be transferred. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account.

Developer, the purchaser or City may submit supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The conveyance shall take place when the Conditions to Sale to Program Participants have been satisfied as to each corresponding Program Participant, as confirmed by City. Escrow Holder is instructed to release escrow closing statements to Developer, the purchaser, Authority and City.

**2.7.3 Authority of Escrow Holder.** Escrow Holder is authorized to, and shall:

(a) Pay and charge Developer and, if applicable, the purchaser for their respective shares of the premium of the Owner's Title Policy (Program Participant), the City Homebuyer Loan Policy and the Developer Homebuyer Loan Policy and any amount necessary to place title in the condition necessary to satisfy the condition of title as described in Section 2.8 of this Agreement.

(b) Pay and charge Developer and the corresponding Initial Homebuyer for their respective shares of any escrow fees, charges, and costs payable under Section 2.7.1 of this Agreement.

(c) Pay and charge Developer for any endorsements to the Owner's Title Policy (Developer), the City Homebuyer Loan Policy, and the Developer Homebuyer Loan Policy which are requested by Developer. The cost of premiums for each Owner's Title Policy, City Homebuyer Loan Policy and each Developer Homebuyer Loan Policy shall be borne by Developer.

(d) Disburse funds, deliver and record the following as prepared or approved by City in relation to each transfer: Habitat Homebuyer Deed, the City Homebuyer Covenants, Homebuyer Senior Deed of Trust, Habitat Homebuyer Deed of Trust and the Notice of Affordability Restrictions, and deliver to City the Amended and Restated City Developer Note, the Modification of City Developer Deed of Trust, the City Homebuyer Covenants and the Notice of



Affordability Restrictions when the Conditions Precedent have been fulfilled or waived by City and deliver to Habitat the Habitat Homebuyer Note and the Habitat Homebuyer Deed of Trust.

(e) Do such other actions as necessary to fulfill its obligations under this Agreement.

(f) Within the discretion of Escrow Holder, direct Authority and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. Authority agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by Escrow Holder, on the form to be supplied by Escrow Holder.

(g) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

**2.7.4 Closing.** The conveyance of property by Developer and delivery of documents related shall close (“Homebuyer Closing”) within thirty (30) days of the parties’ satisfaction of all of Conditions to Sale to Program Participant. The “Homebuyer Closing” shall mean the time and day a deed conveying title to the purchaser is filed for record among Official Records. The “Homebuyer Closing Date” shall mean the day on which the corresponding Homebuyer Closing occurs.

**2.7.5 Termination of Escrow.** If escrow is not in condition to close by the time established therefor in supplemental escrow instructions (and, if no such time is specified, then on the sixtieth day following opening of escrow), then the purchaser, Developer, Authority or City may, in writing, demand the return of money or property and terminate the escrow. If such party makes a written demand for return of documents or properties, escrow shall not terminate until five (5) days after Escrow Holder shall have delivered copies of such demand to all other parties. If any objections are raised within said five (5) day period, Escrow Holder is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties to such escrow (namely, Authority, City, Developer and the corresponding Initial Homebuyer).

**2.7.6 Closing Procedure.** Escrow Holder shall close escrow for the transfer of the corresponding Homebuyer Property from Developer to the purchaser as follows:

(a) Record first (i) the grant deed conveying title subject to resale restrictions, then (ii) City Homebuyer CC&Rs, then (iii) the Homebuyer Senior Deed of Trust then (iv) the Habitat Homebuyer Deed of Trust, then (v) the Notice of Affordability Restrictions. The priorities consistent with the foregoing order of recordation shall constitute the “Designated City Homebuyer Lien Priorities.” If additional deeds of trust are recorded, the original(s) shall be delivered to the beneficiary thereunder (with a copy to each of Developer, the purchaser and City). City will execute and deliver to escrow a request for partial release and reconveyance of the City Developer Deed of Trust and the Modification of City Developer Deed of Trust as to the corresponding House in connection with each sale of a House to an Eligible Homebuyer which is

accomplished in conformity with this Agreement. Any recording fees or charges associated with the recording of such releases shall be borne by Developer.

(b) Instruct the Title Company to deliver the Owner's Title Policy (Homebuyer) to the Homebuyer, with a copy to each of City and Developer, and the "Lender's Title Policy (Homebuyer)" (as described in Section 2.4.2 hereof) to City;

(c) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(d) Deliver the FIRPTA Certificate, if any, to Developer (with a copy to Authority);

(e) Disburse the purchase price as directed by Developer;

(f) Disburse to Developer that amount, if any, that is deposited by City with Escrow Holder that is identified by City as Developer Fee; and

(g) Forward to each of Developer, the purchaser and City a separate accounting of all funds received and disbursed for all parties and copies of all executed and recorded or filed documents deposited into the Transfer Escrow, with such recording and filing date and information endorsed thereon.

#### **2.7.7 Title Insurance, Disposition to Initial Homebuyers; Home Warranty.**

Concurrently with recordation of the conveyance of a Homebuyer Property to the corresponding Initial Homebuyer, there shall be issued to the corresponding Initial Homebuyer a CLTA owner's policy of title insurance ("Owner's Title Policy (Homebuyer)"), together with such endorsements as are reasonably requested by the such homebuyer, issued by the Title Company insuring that the title to the corresponding Homebuyer Property is vested in the Initial Homebuyer in the condition described by Section 2.8 of this Agreement. The Title Company shall provide each of Developer and City with a copy of the Owner's Title Policy (Homebuyer). The Owner's Title Policy (Homebuyer) shall be based upon the lesser of (i) the amount of the Homebuyer Price, or (ii) the largest amount for which the Title Company will provide such title insurance. Developer shall pay that portion of the premium for the Owner's Title Policy equal to the cost of a CLTA standard coverage title policy in the amount based upon the Homebuyer Price. Any additional costs, including the cost of an ALTA policy or any endorsements requested by the corresponding Initial Homebuyer, shall be borne by such Initial Homebuyer upon to the sum of Five Hundred Dollars (\$500.00), with any costs in excess of such amount to be borne by Developer.

The Title Company shall additionally provide to City an ALTA lender's policy of title insurance for the Homebuyer Senior Deed of Trust (the "City Homebuyer Loan Policy"), based upon the original face amount of the corresponding Homebuyer Senior Note, as set forth in the Homebuyer Loan Agreement authorized by City to be used for the corresponding purchaser in conformity with the Designated City Homebuyer Lien Priorities, and subject only to encumbrances, if any, approved in writing by the City Manager. The Title Company shall provide to Developer (at the expense of Developer) an ALTA lender's policy of title insurance for the Habitat Homebuyer Deed of Trust (the "Developer Homebuyer Loan Policy"), based upon the corresponding Habitat Homebuyer Note.

In addition, Developer shall arrange for provision of a home warranty plan to remain in effect for not less than one (1) year (the “Home Warranty Plan”) as to each Homebuyer Property, to be delivered at closing the corresponding Homebuyer. The Home Warrant Plan as to each Homebuyer Property shall be obtained at Developer’s cost.

**2.8 Review of Title.** Developer shall cause the Title Company to deliver to the prospective purchaser a standard preliminary title report (the “Report”) with respect to the title to the corresponding Homebuyer Property (as mutually designated by Developer and City), together with legible copies of the documents underlying the exceptions (“Exceptions”) set forth in the Report, with at least fifteen (15) days to review. The purchaser shall have the right to reasonably approve or disapprove the Exceptions; provided, however, that the purchaser must approve the following Exceptions:

- (a) The Redevelopment Plan.
- (b) The lien of any non-delinquent property taxes and assessments (to be prorated at close of Escrow).
- (c) The provisions of the Authority Deed, the City Developer CC&Rs, the City Homebuyer Covenants, the Homebuyer Senior Deed of Trust, the Habitat Homebuyer Deed of Trust and the Notice of Affordability Restrictions.
- (d) Any incidental easements or other matters affecting title which do not materially impact the purchaser’s use of the corresponding Homebuyer Property as a single family residence.

A condition of title consistent with the Condition of Title as set forth in Section 2.3, but subject additionally to the City Homebuyer Covenants, the Homebuyer Senior Deed of Trust, and the Habitat Homebuyer Deed of Trust; but not the City Developer Deed of Trust, shall hereinafter be referred to as the “Homebuyer Condition of Title.”

**2.9 Title Insurance for Conveyance to Initial Homebuyers.** Title insurance shall be provided in conformity with Section 2.7.7 of this Agreement. The cost for all title policies, including those provided for the benefit of City as beneficiary, shall be borne by Developer.

### **3. DEVELOPER ACTIVITIES FOLLOWING CONVEYANCE OF THE SITE TO DEVELOPER**

**3.1 Property Taxes and Assessments.** Ad valorem taxes and assessments levied, assessed or imposed on the Site for the period after the Authority Conveyance shall be borne by Developer.

**3.2 Developer’s Obligations after the Authority Conveyance.** After the Authority Conveyance, Developer shall, at its sole cost and expense, promptly take: (i) all actions required by any federal, state or local governmental City or political subdivision or any Governmental Requirements with respect to the Site pursuant to this Agreement; (ii) all actions necessary to prepare the soil on the Site for the development required hereunder; and (iii) all actions necessary to make full use of the Site for the development of affordable housing pursuant to this Agreement for the purposes described in this Agreement, which actions, requirements or necessity arise from the



presence upon, about or beneath the Site of any Hazardous Materials regardless of when such Hazardous Materials were introduced to the Site and regardless of who is responsible for introducing such Hazardous Materials to the Site. Developer shall take all actions necessary to promptly restore the Site to an environmentally sound condition for uses contemplated by this Agreement, notwithstanding any lesser standard of remediation allowable under applicable Governmental Requirements. The obligations under this Section 3.2 shall survive the issuance of the Certificate of Completion of Construction.

**3.2.1 Duty to Prevent Hazardous Material Contamination.** After the Authority Conveyance, Developer shall take all reasonably necessary precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with Governmental Requirements as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**3.2.2 “As Is” Conveyance.** Developer expressly understands and agrees that Developer purchased the Site from Authority in an “AS IS” condition on the closing date. As of the closing, each of Authority and City specifically disclaimed the making of any representations or warranties, express or implied, regarding the Site or matters affecting the Site, including without limitation, the physical, soils and environmental condition of the Site.

#### **4. SCOPE OF DEVELOPMENT; INSURANCE AND INDEMNITY, FINANCING**

**4.1 Scope of Development.** Developer shall develop the Improvements in accordance with the Scope of Development, and the approved Plans, drawings and documents for the Improvements. The Improvements shall generally consist of not fewer than eight (8) single-family houses (each a “House”), as more particularly set forth in the Scope of Development. In the event of any inconsistency between the Scope of Development and the plans for the Improvements which have been approved by Authority and/or City, the approved development plans shall control. No House shall have air conditioning as of the time it is sold to a Program Participant. This Agreement shall not prevent an owner of House from making improvements to a House at a time after the House has been conveyed to such owner; City shall have no responsibilities regarding any such future improvements.

#### **4.2 Design Review.**

**4.2.1 Developer Submissions.** Before commencement of construction of the Improvements or other works of improvement upon the Site, Developer shall submit to City any plans and drawings (collectively, the “Design Development Drawings”) which may be required by City with respect to any permits and entitlements which are required to be obtained to develop the Improvements. Developer shall also be responsible to process at its cost and obtain approval of the Parcel Map and to comply with any conditions of approval. Developer, on or prior to the date set forth in the Schedule of Performance, shall submit to City such plans for the Improvements as required by City in order for Developer to obtain building permits for the Improvements. Within thirty (30) days after City’s disapproval or conditional approval of such plans, Developer shall revise the portions of such plans identified by City as requiring revisions and resubmit the revised plans to City.

**4.2.2 City Review and Approval.** City shall have all rights to review and approve or disapprove all Design Development Drawings and other required submittals in accordance with the City Municipal Code, and nothing set forth in this Agreement shall be construed to constitute City's approval of any or all of the Design Development Drawings or to limit or affect City's review and right to approve, approve subject to conditions, or disapprove Design Development Drawings, plans, drawings, applications, or submittals.

**4.2.3 Revisions.** Any and all change orders or revisions required by City and its inspectors which are required under the Municipal Code and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by Developer in its Design Development Drawings and other required submittals and shall be completed during the construction of the Improvements.

**4.2.4 Defects in Plans.** City and the Authority shall not be responsible either to Developer or to third parties in any way for any defects in the Design Development Drawings, nor for any structural or other defects in any work done according to the approved Design Development Drawings, nor for any delays reasonably caused by the review and approval processes established by this Section 4.2.4.

**4.2.5 Land Use Approvals.** Before commencement of construction of the Improvements or other works of improvement upon the Site, Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits, and approvals which may be required for the Improvements by City or any other governmental agency affected by or having jurisdiction over such construction or work, except for those which are the responsibility of City as set forth herein, including without limitation a license agreement between Developer and City allowing entry onto the Site which indemnifies each of the Authority and City from and against any claims made in connection with the activities of Developer. Except as otherwise expressly set forth in Section 4.4 below, Developer shall, without limitation, apply for and secure, and pay all costs, charges and fees associated therewith, all permits and fees required by City, the County, and other governmental agencies with jurisdiction over the Improvements.

Developer shall be responsible at its cost for obtaining and causing to be recorded a Parcel Map in connection with the development and financing of the Improvements.

**4.3 Time of Performance; Progress Reports.** Developer shall submit all Design Development Drawings, commence and complete all construction of the Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefor in this Agreement. Construction of the Improvements shall be commenced within thirty (30) days after the earlier to occur of: (i) the recording of the Authority Deed, or (ii) the initial disbursement of any funds to or on behalf of Developer pursuant to this Agreement under the City Developer Loan. Following the First Amendment Date, once construction is commenced, it shall continuously and diligently be pursued to completion and without cessation for more than fifteen (15) days subject to Section 8.2 hereof. During the course of construction and prior to issuance of the Certificate of Completion of Construction, Developer shall provide timely reports of the progress of construction when requested by the City Manager. Developer shall complete construction of all of the Improvements on the Site by the time established therefor in the Schedule of Performance.

**4.4 Construction Contract.** All costs of planning, designing, developing, obtaining permits for (including permit fees), and constructing the Improvements shall be borne solely by Developer.

**4.5 Insurance Requirements.** Until the Certificate of Completion of Construction has been issued upon completion of all of the Improvements and the House has been sold to a Program Participant, Developer shall maintain at Developer's sole expense, with insurers reasonably approved by City, the following policies of insurance in form and substance reasonably satisfactory to City:

(a) workers' compensation insurance and any other insurance required by law in connection with the Improvements;

(b) upon commencement of construction of the Improvements and at all times prior to completion of the Improvements, builder's risk-all risk insurance covering 100% of the replacement cost of all Improvements (including offsite materials) during the course of construction in the event of fire, lightning, windstorm, vandalism, earthquake, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);

(c) following completion of the Improvements, fire and hazard "all risk" insurance covering 100% of the replacement cost of the Improvements in the event of fire, lightning, windstorm, vandalism, earthquake (if available at commercially reasonable rates), malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);

(d) public liability insurance in amounts reasonably required by the City Manager from time to time, and in no event less than \$2,000,000 for "single occurrence;" and

(e) property damage insurance in amounts reasonably required by the City Manager from time to time, and in no event less than \$2,000,000.

All such insurance shall provide that it may not be canceled or materially modified without thirty (30) days prior written notice to City. The policies required under subparagraphs (b) and (c) shall include a "lender's loss payable endorsement" (Form 438BFU) in form and substance satisfactory to City, showing City as encumbrancer. Each of Authority and City shall be an additional insured in the policies required under subparagraphs (d) and (e). No such insurance shall include deductible amounts to which City has not previously consented in writing. Certificates of insurance for the above policies (and/or original policies, if required by City) shall be delivered to City from time to time within 10 days after demand therefor. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Developer shall deliver to City evidence of renewal or replacement of such policy reasonably satisfactory to the City Manager. The insurance requirements as set forth in this Section 4.5 may be modified from time to time upon mutual written agreement of the City Manager (for City and the Authority) and Developer.

Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by Authority or City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit each of Authority and City. None of the above-described policies shall require Developer to

meet a deductible or self-insured retention amount of more than Five Thousand Dollars (\$5,000.00) unless approved in writing by the City Manager. All policies shall be written by good and solvent insurers qualified to do business in California and shall have a policyholder's rating of A or better in the most recent edition of "Best's Key Rating Guide -- Site and Casualty." The required certificate shall be furnished by Developer at the time set forth herein.

**4.5.1 Waiver of Subrogation.** Developer hereby waives all rights to recover against each of Authority and City (or any officer, employee, agent or representative of City or Authority) for any loss incurred by Developer from any cause insured against or required by any Project Document to be insured against; provided, however, that this waiver of subrogation shall not be effective with respect to any insurance policy if the coverage thereunder would be materially reduced or impaired as a result. Developer shall use its best efforts to obtain only policies which permit the foregoing waiver of subrogation.

**4.6 Obligation to Repair and Restore Damage Due to Casualty.** If during the period of construction or prior to conveyance of the House to a purchaser, the Improvements shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be constructed pursuant to this Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Developer shall complete the same as soon as possible thereafter so that the Improvements can be occupied as an affordable housing project in accordance with this Agreement. In no event shall the repair, replacement, or restoration period exceed twelve (12) months from the date Developer obtains insurance proceeds unless the City Manager, in his sole and absolute discretion, approves a longer period of time. City shall cooperate with Developer, at no expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, Developer may elect not to repair, replace, or restore the Improvements by giving notice to City (in which event Developer will be entitled to all insurance proceeds but Developer shall be required to remove all debris from the applicable portion of the Site) or Developer may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by City, Authority, and the other governmental City or agencies with jurisdiction, and City may pursue remedies of its choosing under this Agreement, including without limitation termination.

**4.7 Indemnity.** Developer shall defend (by counsel satisfactory to City), indemnify and save and hold harmless each of City and Authority and their respective officers, contractors, agents and employees (collectively, the "Indemnitees") from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising from or relating to: (i) the Original AHA; (ii) this Agreement; (iii) the making of the City Developer Loan; (iv) the Site and the conveyance thereof; (v) a claim, demand or cause of action that any person has or asserts against Developer; (vi) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Site; or (vii) the ownership, occupancy or use of the Site; provided that, as long as Developer has completed the Improvements and conveyed the Site in strict conformity with this Agreement (including without limitation provisions concerning affordable housing cost and income limitations of buyers), liability with respect to this item (vii) shall be limited to the period during which

Developer owns the Site (or applicable portion thereof). Notwithstanding the foregoing portion of this Section 4.7, Developer shall not be obligated to indemnify City with respect to the consequences of any act of gross negligence or willful misconduct of City. Developer's obligations under this Section shall survive the satisfaction of the City Developer Note, the release and reconveyance of the City Developer Deed of Trust and the Modification of City Developer Deed of Trust, issuance of the Certificate of Completion of Construction (except that the issuance of such Certificate shall constitute conclusive evidence that construction of the Improvements has been completed), and termination of this Agreement.

In the event of a default or breach under this Agreement that is caused or contributed to by Developer, Developer shall reimburse City and Authority immediately upon written demand for all costs reasonably incurred by City or Authority (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City or Authority) in connection with the enforcement of the Project Documents and all related matters including the following: (a) City's or Authority's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Document, and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City or Authority is indemnified under the Project Documents. Such reimbursement obligations shall bear interest from the date occurring ten (10) days after City or Authority gives written demand to Developer at the same rate as is provided in this Agreement for the Homebuyer Senior Promissory Note, and shall be deemed to be secured by the Original City Developer Deed of Trust and upon recordation thereof the Modification of City Developer Deed of Trust. Such reimbursement obligations shall survive the satisfaction of the Original City Developer Note, the Amended and Restated City Developer Note, the release and reconveyance of the Original City Developer Deed of Trust (and the Modification of City Developer Deed of Trust), the issuance of the Certificate of Completion of Construction, and termination of this Agreement.

Developer shall indemnify each of the Authority and City from any real estate commissions or brokerage fees which may arise from this Agreement or the Site, including without limitation the acquisition of the Site by Developer, or the sale or marketing of Houses and Homebuyer Properties. Developer represents that it has engaged no broker, agent, or finder in connection with this transaction, and Developer agrees to hold each of the Authority and City harmless from any claim by any broker, agent or finder in connection with this Agreement, the activities by Developer, or the Site.

**4.8 Rights of Access.** Prior to the issuance of the Certificate of Completion of Construction, for purposes of assuring compliance with this Agreement, representatives of City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as City representatives comply with all safety rules. City representatives shall, except in emergency situations, notify Developer prior to exercising its rights pursuant to this Section 4.8. The rights of City under this Section 4.8 are in addition to and do not limit City's police power or exercise thereof.

**4.9 Compliance with Laws.** Developer shall carry out the design, construction and operation of the Improvements in conformity with all applicable Rules and Regulations and all applicable laws, including all applicable state labor standards and federal prevailing wage laws (including without limitation provisions for payment of prevailing wages in connection with all



construction of the Improvements to the extent applicable), City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, and the Fair Housing Act, 42 U.S.C. Section 3601 *et seq.* (and 24 C.F.R. Part 100), the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.* Developer, including but not limited to its contractors and subcontractors, shall comply with Labor Code Section 1720, *et seq.*, and its implementing regulations, regarding the payment of prevailing wages (the “State Prevailing Wage Law”) and, if applicable, federal prevailing wage law (“Federal Prevailing Wage Law”) and, together with State Prevailing Wage Law, “Prevailing Wage Laws”) with regard to the construction of the Improvements, but only if and to the extent such sections are applicable to the development of the Improvements. In addition, Developer shall be responsible for compliance with Section 3 and shall include a Section 3 clause in its construction contracts. Developer shall be solely responsible for determining and effectuating compliance with the Prevailing Wage Laws, and the Authority or City make no final representation as to the applicability or non-applicability of the Prevailing Wage Laws to the Improvements, or any part thereof. Developer hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold each of the Authority and City, and their respective officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Developer’s acts or omissions pertaining to the compliance with the Prevailing Wage Laws for the Improvements.

Without limitation as to Section 4.7 of this Agreement, Developer shall indemnify, protect, defend and hold harmless each of the Authority, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Commission, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and/or federal prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. “Increased costs,” as used in this Section 4.9, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Improvements by Developer.

**4.10 Nondiscrimination in Employment.** Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national

origin, sex, sexual orientation, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability.

**4.11 Taxes and Assessments.** Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site. Developer shall remove or have removed any levy or attachment made on any of the Site or any part thereof which is owned or leased by Developer, or assure the satisfaction thereof within a reasonable time, but in no event to exceed sixty (60) days. Developer shall additionally defend, indemnify, and hold harmless City and the Authority from and against any taxes, assessments, mechanic's liens, claims of materialmen and suppliers, or other claims by private parties in connection with (a) activities undertaken by Developer or (b) the Site.

**4.12 Liens and Stop Notices.** Developer shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Improvements Developer shall within thirty (30) days of such recording or service or within five (5) days of City's demand whichever last occurs:

(a) pay and discharge the same; or

(b) affect the release thereof by recording and delivering to City a surety bond in sufficient form and amount, or otherwise; or

(c) provide City and Authority with indemnification from the Title Company against such lien or other assurance which City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

**4.13 Certificate of Completion of Construction.** Promptly after receipt of written request therefor from Developer after completion of the Improvements in conformity with this Agreement, City shall furnish Developer with a Certificate of Completion of Construction. The Certificate of Completion of Construction shall be a conclusive determination of satisfactory completion of the Improvements and the Certificate of Completion of Construction shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site or such applicable portion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as set forth in documents recorded against the Site prior to the recordation of the Certificate of Completion of Construction. If City refuses or fails to furnish a Certificate of Completion of Construction after written request from Developer, City shall, within thirty (30) days of written request therefor, provide Developer with a written statement of the reasons City refused or failed to furnish the Certificate of Completion of Construction. The statement shall also contain City's opinion of the actions Developer must take to obtain the Certificate of Completion of Construction. The Certificate of Completion of Construction is not a notice of completion as referred to in Section 3093 of the California Civil Code. Upon receipt of request therefor, City will prepare a partial certificate, which shall conclusively evidence the completion of those Improvements located on a particular Homebuyer Property as required under this Agreement to be constructed on such Homebuyer Property.

**4.14 Further Assurances.** Developer shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to City all documents, and take all actions, reasonably required by City from time to time to confirm the rights created or now or hereafter intended to be

created under the Project Documents, to protect and further the validity, priority and enforceability of the Project Documents, each Homebuyer Loan Agreement (including the attachments thereto), or otherwise to carry out the purposes of the Project Documents.

## 5. DEVELOPER'S GENERAL REPRESENTATIONS AND WARRANTIES

As a material inducement to each of Authority and City to enter into this Agreement, Developer represents and warrants to City that:

**5.1 Formation, Qualification and Compliance.** Developer (a) is a California nonprofit public benefit corporation validly existing and in good standing under the laws of the State of California; (b) has all requisite authority to conduct its business and own, purchase, improve and sell its properties. Developer is in compliance in all material respects with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with any governmental City that are necessary for the transaction of its business; (c) Developer has and will in the future duly authorize, execute and deliver this Agreement and any and all other agreements and documents required to be executed and delivered by Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement; (d) Developer does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of Developer to carry out its obligations hereunder; (e) There are no material pending or, so far as is known to Developer, threatened, legal proceedings to which Developer is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed by Developer to City in this Agreement which could materially adversely affect the ability of Developer to carry out its obligations hereunder; and (f) There is no action or proceeding pending or, to Developer's best knowledge, threatened, looking toward the dissolution or liquidation of Developer and there is no action or proceeding pending or, to Developer's best knowledge, threatened by or against Developer which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of Developer to carry out its obligations hereunder.

Each of the foregoing items (a) to (f), inclusive, shall be deemed to be an ongoing representation and warranty. Developer shall advise City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (f), inclusive.

**5.2 Execution and Performance of Project Documents.** Developer has all requisite authority to execute and perform its obligations under the Project Documents. The execution and delivery by Developer of, and the performance by Developer of its obligations under, each Project Document has been authorized by all necessary action and do not and will not violate any provision of, or require any consent or approval not heretofore obtained under, any articles of incorporation, by-laws or other governing document applicable to Developer.

**5.3 Covenant Not to Transfer Except in Conformity.** Developer shall not sell, lease, or otherwise transfer or convey all or any part of the Site, or any interest therein, unless Developer has first obtained the prior written consent of the City Manager, which consent shall be given as to transfers to homebuyers proposed to be made in conformity with this Agreement (but, as to other transfers, may be withheld in the City Manager's sole and absolute discretion). Any sale, lease, transfer or conveyance without such consent shall, at City's option, be void. In connection with the foregoing consent requirement, Developer acknowledges that City relied upon Developer's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the



satisfactory completion of all of the Improvements, and the marketing and sale of the Homebuyer Properties to Very Low Income Households each at a price which does not exceed Affordable Housing Cost to afford the community a substantial long-term, quality affordable housing resource.

## 6. SALE OF THE HOMEBUYER PROPERTIES; AFFORDABLE HOUSING PROGRAM PARTICIPANT DOCUMENTS

### 6.1 Sale at Affordable Housing Cost to Very Low Income Households; City Program Participant Documents.

**6.1.1 Affordable Housing.** Developer covenants and agrees that each of the Homebuyer Properties shall be sold to an Initial Homebuyer and shall be restricted with the income and affordability requirements as set forth herein. Developer covenants and agrees that the above-referenced occupancy, ownership and affordability requirements governing the Homebuyer Properties shall bind and be enforceable against each of the Homebuyer Properties throughout the Affordability Period.

**6.1.2 Sale of the Homebuyer Properties.** As set forth in the foregoing portion of Section 6.2, Developer agrees to sell each of the Homebuyer Properties to Program Participants at a price which, in each and every case, does not exceed Affordable Housing Cost. During the Affordability Period each subsequent resale of a Homebuyer Property by the then-owner thereof shall be to a Program Participant at a price which does not exceed Affordable Housing Cost. All sales of the Homebuyer Properties shall be in compliance with Section 6.1 hereof and each purchaser shall be reviewed by City and must execute the Program Participant Documents. Developer covenants and agrees that no sales of the Homebuyer Properties shall be made to any of its employees or to persons or families related, within the fourth degree of consanguinity, to any shareholder or partner of Developer or anyone related by blood or marriage to any such shareholder or partner.

Upon completion of those Improvements required to be constructed under this Agreement, and provided that the Conditions to Sale to Program Participants have been satisfied, Developer shall convey by grant deed a Homebuyer Property to an Initial Homebuyer; provided that such sale shall have been accomplished in strict conformity with all requirements of this Agreement, including without limitation that all of the Conditions to Developer's Sale to Program Participant, as set forth in Section 6.4, have been satisfied, and further provided that: (i) the Program Participant executes and deposits with the Homebuyer Escrow Holder the Homebuyer Purchase and Sale Agreement, (ii) the City Developer CC&Rs are executed, recorded, and delivered to City; (iii) the Program Participant executes and causes to be delivered to City each of the Homebuyer Senior Note and the Habitat Homebuyer Note, and (iv) the Program Participant executes, and causes to be recorded and delivered to City each of the City Homebuyer Covenants, the Homebuyer Senior Deed of Trust and the Habitat Homebuyer Deed of Trust, then City shall, as to the corresponding Homebuyer Property (but not as to the remainder of the Site), release the corresponding Homebuyer Property from the City Developer Deed of Trust as modified by the Modification of City Developer Deed of Trust. Developer covenants to develop or to cause the development and use of the Homebuyer Properties by Program Participants in conformity with this Agreement.

In connection with each sale of a Homebuyer Property to an Initial Homebuyer, City shall prepare and Developer shall approve escrow instructions requiring the following order of recordation: (i) the deed conveying title as to the corresponding Homebuyer Property from Developer to such Initial Homebuyer, which shall be subject to restrictions then of record, including

without limitation as set forth in the Authority Deed; then (ii) the City Homebuyer Covenants; then (iii) the Homebuyer Senior Deed of Trust (or a new deed of trust prepared by City); then (iv) the Habitat Homebuyer Deed of Trust (which affirmatively states that it is subject and subordinate to the Homebuyer Senior Deed of Trust).

The Program Participant shall fully cooperate in providing to the staff members or consultant designated by the City Manager applications and information from prospective homebuyers sufficient for City to review and confirm that the incomes of Program Participants, loan amounts, and prices conform to this Agreement. Each transfer of a Homebuyer Property (or any portion of the Site) shall be transacted through the Escrow Holder and in conformity with this Agreement.

**6.1.3 Program Participant Price.** Developer agrees that the price that Developer will charge in connection with each Homebuyer Property will be not greater than the Affordable Housing Cost of such unit as applicable to Very Low Income Households as determined under Sections 50052.5 and 50105 of the California Health and Safety Code and shall be consistent with the Current Market Appraised Value. It is contemplated by City and Developer that the Program Participant's purchase price will consist of a down payment by the Program Participant to be disbursed at closing to Developer, the Homebuyer Senior Loan, the Habitat Homebuyer Loan, only, and with no financing provided by any other party.

**6.1.4 Process to Complete First Transfer by Sale of House by Developer.** Upon the first sale of each Homebuyer Property by Developer, the following procedures shall apply:

6.1.4.1 Qualifications of Proposed Transferee. No sale of a Homebuyer Property shall occur unless and until (a) Developer first determines that the proposed transferee: (i) intends to occupy the corresponding Homebuyer Property as the proposed transferee's principal residence; and (ii) is a Very Low Income Household and (b) Developer certifies in writing to each of the Authority and City that the proposed transferee has satisfied the Habitat Work Qualifications. Each proposed transferee shall submit a Proposed Transferee's Application to Developer, the Authority and City certifying its intent with regard to the occupancy of the corresponding Homebuyer Property and as to the truth and accuracy of all information supplied as to the gross income (calculated as set forth in 25 Cal. Code of Regs., Section 6914) of the proposed transferee.

6.1.4.2 Sales Price. Each Homebuyer Property shall be sold at an Affordable Housing Cost. In determining Affordable Housing Cost, the family size of the proposed Transferee shall be deemed to be 2 persons in the case of a 1 bedroom, 3 persons for a 2 bedroom, 4 persons for a 3 bedroom, or 5 persons for a 4 bedroom Restricted Unit. In addition, City's calculation of the Affordable Housing Cost in connection with each respective Homebuyer Property shall be based upon the following assumptions: (i) the provisions of the Homebuyer Senior Note and the Habitat Homebuyer Note as provided therein (or, if City does not agree that the Homebuyer Senior Loan shall be in place, then principal and interest payments equal to those which would be due upon a mortgage loan amortized over a thirty (30) year period with an interest rate equal to the then prevailing fixed interest rates for thirty (30) year fixed-rate mortgage loans, and a senior loan shall instead be for an amount not greater than the sales price after crediting the Sweat Equity Amount); and (ii) reasonable amounts for property taxes and assessments, fire and casualty insurance covering replacement value of property improvements, and homeowner association fees (if any).

6.1.4.3 Certificates from Parties. With respect to each sale of each Homebuyer Property, Developer shall submit to City, not later than fourteen (14) business days prior to close of escrow on the sale of the corresponding Homebuyer Property, a certificate that (i) Developer has made the affirmative determinations required by Section 6.1.4.1 above and (ii) the sales price conforms to Section 6.1.4.2 above. The certificate shall be substantially in the form of Developer Sale Certificate. Developer shall concurrently submit to City the Proposed Transferee's Application and all attachments thereto, the sales contract, and all other documents or material with regard to information required by Sections 6.1.4.1 and/or 6.1.4.2 above, whether or not relied on by Developer. Further, Developer and proposed transferee each shall certify in writing, in a form acceptable to City, that the sale shall be closed in accordance with this Agreement (including without limitation the Rules and Regulations and the other Governmental Requirements), and only with, the terms of the sales contract and other documents submitted to and approved by City and that all consideration delivered by the proposed transferee to Developer has been fully disclosed to City. The written certificate shall also include a provision that, in the event a transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certificate submitted to City (on behalf of each of City and the Authority) for its approval of the transfer, City as well as the Authority shall have the right to file an action at law or in equity to seek termination and/or rescission of the sales contract and/or declare the sale void, notwithstanding the fact that the transfer may have closed and become final as between Developer and its transferee. In the event Developer fails to comply with Sections 6.1.4.1 or 6.1.4.2 above, any costs, liabilities or obligations incurred by Developer and its transferee for the return of any monies paid or received or for any costs and legal expenses, shall be borne jointly and severally by Developer and its transferee and such parties shall hold each of the Authority and City harmless and reimburse their expenses, legal fees and costs for any action City and/or Authority take in enforcing the terms of this Section 6.1.4.

6.1.4.4 Delivery of Documents. In addition to the documents required to be provided by Section 6.1.4.3 above, upon the close of the proposed transfer, Developer and transferee, as applicable, shall provide City (on behalf of each of City and the Authority) and Developer with a copy of the final sales contract, settlement statement, escrow instructions, a fully executed set of Program Participant Documents and any other documents which City may reasonably request.

**6.1.5 Process to Obtain Approval of Transfer of each Homebuyer Property after the First Transfer of such Homebuyer Property by Developer.** The process for obtaining City approval of the transfer of each Homebuyer Property during the Affordability Period and following the first transfer of such Homebuyer Property by Developer is set forth in the City Developer CC&Rs.

**6.2 Uses.** Developer covenants and agrees to devote, use, operate, and maintain the Site in accordance with the Redevelopment Plan, the Grant Deed, the City Developer CC&Rs and this Agreement. All uses conducted on the Site, including, without limitation, all activities undertaken by Developer pursuant to this Agreement, shall conform to the Redevelopment Plan, all applicable provisions of the Moreno Valley Municipal Code, and the recorded documents pertaining to and running with the Site.

**6.3 Nondiscrimination.** Developer by and for itself and any successors in interest covenants that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy,

tenure or enjoyment of the Site, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

(b) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

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

**6.4 Conditions to Developer’s Sale to Program Participants.** The sale of each Homebuyer Property by Developer to Program Participant (the “Conditions to Sale to Program Participants”) shall be subject to the satisfaction or waiver by the City Manager (which waiver will

be effective only if it is an express waiver made in writing by the City Manager), of the following conditions precedent (a) through (k):

(a) Improvements Completed. The improvements for the corresponding Homebuyer Property shall have been completed as determined in good faith by the City Manager, following issuance of a certificate of occupancy by City as to the House located thereon.

(b) Purchase and Sale Agreement. Developer and the corresponding Program Participant shall have entered into a Habitat Homebuyer Purchase and Sale Agreement which strictly conforms to the requirements and provisions of this Agreement.

(c) Escrow Instructions. The City Manager shall have approved the instructions for such escrow.

(d) Lien Priorities, Title Insurance and Documents among Interested Parties. The Program Participant shall have agreed to assume the obligations of borrower under the Homebuyer Senior Note and the Habitat Homebuyer Note and shall have additionally agreed to conform to all requirements under the Authority Deed, the City Developer CC&Rs, the City Homebuyer Covenants, the Homebuyer Loan Agreement (including without limitation all attachments thereto) and the provisions of Section 2.7 hereof. The Homebuyer Senior Deed of Trust shall be a first deed of trust, subject only to the Authority Deed and the City Developer CC&Rs. The Habitat Homebuyer Deed of Trust shall be a second deed of trust subject only to the Authority Deed, the City Developer CC&Rs and the Homebuyer Senior Deed of Trust.

(e) Insurance. City shall have received sufficient evidence of the issuance of a homeowner's insurance policy with a guaranteed replacement provision for the corresponding Homebuyer Property, and a lender's loss payable endorsement in its favor.

(f) Affordability and Income Requirements. The City Manager shall be satisfied that the Program Participant meets the applicable income requirements for a Very Low Income Household, and that the purchase price of the corresponding Homebuyer Property is at a price which does not exceed Affordable Housing Cost. Each of the Program Participant and Developer shall cooperate in furnishing the City Manager with complete information in the form sought by City for the purposes of verifying income eligibility and affordability.

(g) Other Matters. City shall have received such other documents and information as the City Manager may reasonably request.

(h) Representations and Warranties. The representations and warranties of Developer contained in this Agreement shall be correct as of the close of the Homebuyer Escrow as though made on and as of that date, and City Manager shall have received a certificate to that effect signed by an officer of Developer.

(i) Conditions Precedent. All Conditions Precedent (as set forth in Section 3.1 of the Original AHA) shall remain satisfied.

(j) Certificate. Developer shall have delivered to City Manager a Developer Sale Certificate as to the House proposed to be sold by Developer.



(k) No Default. No Event of Default by Developer shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer, and City Manager shall have received a certificate to that effect, in form and substance reasonably satisfactory to the City Manager, signed by an officer of Developer.

**6.5 Effect of Violation of the Terms and Provisions of this Agreement after Completion of Construction.** The covenants established in this Agreement and the deeds shall, without regard to technical classification and designation, be binding for the benefit and in favor of City, its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Agreement shall remain in effect for the periods of time specified therein. The covenants against discrimination shall remain in effect in perpetuity.

City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of City, without regard to whether City has been, remains or is an owner of any land or interest therein in the Site or in the Project Area. City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

After issuance of a Certificate of Completion of Construction for all of the Improvements required by this Agreement to be developed on the corresponding Homebuyer Property, all of the terms, covenants, agreements and conditions set forth in this Agreement relating to the construction and development thereon shall cease and terminate as to such Homebuyer Property. All of the other applicable terms, covenants, and conditions set forth in this Agreement relating to use, operation, ownership, and maintenance of the Site shall survive and shall remain in full force and effect.

**6.6 Use of Moneys by Developer.** Developer agrees that it shall apply the revenues received by Developer from promissory notes made by homebuyers for additional affordable housing projects. Developer agrees that it shall provide to City annual reports commencing December 30, 2015 and thereafter on each anniversary thereof during the Affordability Period.

**7. DEFAULTS AND REMEDIES**

**7.1 Events of Default.** The occurrence of any of the following, whatever the reason therefor, shall constitute an event of default by Developer (an “Event of Default”):

7.1.1.1 Developer fails to make payment under the City Developer Note when due, and such failure is not cured within five (5) days after Developer’s receipt of written notice that such payment was not received when due; or

7.1.1.2 Developer fails to perform any other obligation for the payment of money (other than payments of principal or interest) under any Project Document, and such failure is not cured within ten (10) days after Developer’s receipt of written notice that such obligation was not performed when due; or

7.1.1.3 Developer fails to perform any obligation (other than obligations described in sub-paragraphs (a) and (b), above) under any Project Document, and such failure is not cured within thirty (30) days after Developer's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such thirty (30) day period, such failure shall not be an Event of Default so long as Developer (in any event, within ten (10) days after receipt of such notice) commences cure, and thereafter diligently (in any event within ninety (90) days after receipt of such notice) prosecutes such cure to completion; or

7.1.1.4 Any representation or warranty in any Project Document proves to have been incorrect in any material respect when made; or

7.1.1.5 Work on the Improvements ceases for thirty (30) consecutive days for any reason (other than governmental orders, decrees or regulations, acts of God, strikes or other causes beyond Developer's control, provided that the same do not, in the aggregate and in the City Manager's reasonable judgment, threaten to delay the completion of the Improvements beyond the required completion date set forth in this Agreement); or

7.1.1.6 Developer is enjoined or otherwise prohibited by any governmental City from constructing and/or occupying the Improvements and such injunction or prohibition continues unstayed for thirty (30) days or more for any reason; or

7.1.1.7 Developer transfers or conveys the Site (or attempts to transfer or convey the Site) in any manner that is not in conformity with this Agreement; or

7.1.1.8 Developer provides any certification to City or City Manager, including without limitation a Developer Sale Certificate that contains any information that is false or misleading; or

7.1.1.9 Developer is dissolved, liquidated or terminated, or all or substantially all of the assets of Developer are sold or otherwise transferred without the City Manager's prior written consent;

7.1.1.10 Developer is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Developer applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitate or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Developer and the appointment continues undischarged or unstayed for ninety (90) days; or Developer institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Developer and continues undismissed or unstayed for ninety (90) days; or any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Developer is not released, vacated or fully bonded within ninety (90) days after its issue or levy.

**7.2 Remedies upon Default.** Upon the occurrence of any Event of Default, each of Authority and City may, at its respective option and in its sole and absolute discretion, do any or all of the following:

- (a) By written notice to Developer, declare the principal of all amounts owing under the Project Documents, together with all accrued interest and other amounts owing in connection therewith, to be immediately due and payable, regardless of any other specified due date;
- (b) In its own right or by a court-appointed receiver, take possession of the Site, enter into contracts for and otherwise proceed with the completion of the Improvements on the Site (or portions thereof) by expenditure of its own funds;
- (c) Exercise any of its rights under the Project Documents and any rights provided by law, including the right to foreclose on any security and exercise any other rights with respect to any security, all in such order and manner as City elects in its sole and absolute discretion; and
- (d) Seek and obtain an order for specific performance.

**7.3 Cumulative Remedies; No Waiver.** City's and Authority's respective rights and remedies under the Project Documents are cumulative and in addition to all rights and remedies provided by law from time to time. The exercise by City or Authority of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice City or Authority in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by City or Authority to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of any Project Document shall be construed as a waiver of any subsequent breach of the same provision. City's or Authority's consent to or approval of any act by Developer requiring further consent or approval shall not be deemed to waive or render unnecessary City's or Authority's consent to or approval of any subsequent act. City's or Authority's acceptance of the late performance of any obligation shall not constitute a waiver by City or Authority of the right to require prompt performance of all further obligations; City's or Authority's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of City's or Authority's right to proceed with the exercise of its remedies for any unfulfilled obligations; and City's or Authority's acceptance of any partial performance shall not constitute a waiver by City of any rights relating to the unfulfilled portion of the applicable obligation.

**7.4 Termination.**

**7.4.1 No Termination by Developer.** Developer shall not have the power to terminate this Agreement.

**7.4.2 Termination by City.** In the event that:

- (a) Developer (or any successor in interest) assigns or attempts to assign, encumber, transfer, or convey the Agreement or any rights therein or in the Site (or any portion thereof) in violation of this Agreement; or



(b) There is a change in the ownership of Developer contrary to the provisions of Section 5.3 hereof; or

(c) Developer does not submit certificates of insurance, construction plans, drawings and related documents as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor and such default or failure shall not be cured within thirty (30) days after the date of written demand therefor by City; or

(d) Developer does not satisfy the Conditions Precedent by the time established therefor in the Schedule of Performance; or

(e) The completion of one or more of the Houses is not accomplished by the respective time(s) established therefor in the Schedule of Performance; or

(f) Developer conveys or attempts to convey the Site, or any portion thereof, excepting as expressly authorized by this Agreement and in strict conformity herewith; or

(g) Developer provides any certification to City or City Manager, including without limitation a Developer Sale Certificate that contains any information that is false or misleading; or

(h) Developer is otherwise in default under this Agreement and has not cured or commenced to cure such default within the time period set forth in Section 7.1 herein (or has not diligently prosecuted such cure to completion);

then, at the option of City, thirty (30) days after written notice thereof is delivered to Developer, this Agreement shall be terminated, and thereafter neither party shall have any further rights against the other under this Agreement, excepting that Developer shall immediately quitclaim to City all right, title and interest of Developer in the Site (including without limitation fee title and any beneficial interests under deeds of trust, promissory notes, and agreements in respect to the Site). The setting forth of events as grounds for termination shall not limit the ability of City to seek remedies in the event this Agreement has not been terminated. The termination of this Agreement shall not limit the rights of City and/or Authority to enforce the Original City Developer Note, the Amended and Restated City Developer Note, the City Developer Deed of Trust, the Modification of City Developer Deed of Trust, the City Developer CC&Rs, the Authority Deed, or any Homebuyer Loan Agreement (including instruments executed in connection thereunder).

**8. MISCELLANEOUS.**

**8.1 Transfers of Interest in Site or Agreement.**

**8.1.1 Prohibition.** The qualifications and identity of Developer are of particular concern to City and Authority. It is because of those qualifications and identity that each of Authority and City has entered into this Agreement with Developer. Accordingly, for the period commencing upon the Date of Agreement and until the expiration of the Affordability Period (a) no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, (b) neither Developer nor any successor or assign thereof shall make any total or partial sale, transfer, conveyance, assignment, refinancing or lease of the whole or any part of the Site or the Improvements thereon (collectively referred to herein as a "Transfer"), without the prior

written approval of City, except to the extent otherwise expressly set forth in Section 603.2 hereof. City agrees that it shall not unreasonably withhold approval of any transfer to a Very Low Income Household at an Affordable Housing Cost upon submittal of documentation acceptable to City that such transfer satisfies all requirements of this Agreement.

**8.1.2 Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, City approval of a Transfer shall not be required in connection with the conveyance or dedication of any portion of the Site to City or the granting of easements or permits to facilitate construction of the Improvements. In addition, Developer shall retain the Drainage and Water Quality Easements at all times during the Affordability Period and shall not alienate, reduce or eliminate any of such Drainage and Water Quality Easements excepting to the City subject to first having obtained the prior written approval of the City to receive such Drainage and Water Quality Easements, with the City, in such context, acting at its sole and absolute discretion.

**8.1.3 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**8.1.4 Assignment by Authority.** Authority may assign or transfer any of its interests hereunder to City at any time without the consent of Developer.

**8.2 Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; litigation; unusually severe weather; acts or omissions of the other party; acts or failures to act of a public or governmental City or entity (other than City acting as required pursuant to this Agreement); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other parties within thirty (30) days of the commencement of the cause. Any requests for extension shall be in writing. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer.

Notwithstanding the foregoing portion of this Section 8.2, Developer is not entitled pursuant to this Section 8.2 to an extension of time to perform because of past, present, or future difficulty in obtaining suitable temporary, construction, or permanent financing for the acquisition, development or operation of the Site, in determining qualified purchasers who satisfy the Habitat Work Qualifications and are Eligible Homebuyers, or in accomplishing sale of all of the Houses by the time established therefor on the Schedule of Performance.

**8.3 Nonliability of Officials and Employees of City.** No member, official or employee of City or of the Authority shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City (or the Authority) or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.

**8.4 Obligations Unconditional and Independent.** Notwithstanding the existence at any time of any obligation or liability of City or Authority to Developer, or any other claim by Developer against City or Authority, in connection with the Site or otherwise, Developer hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Developer’s obligations under this Agreement (including without limitation the attachments hereto), or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Developer of any of its obligations under the Project Documents.

**8.5 Notices.** All notices, demands, approvals and other communications provided for in the Project Documents shall be in writing and be delivered to the appropriate party at its address as follows:

- If to Developer:           Habitat for Humanity, Riverside, Inc.  
2180 Iowa Avenue  
Riverside, California 92507  
Attention: Executive Director of Habitat
  
- If to Authority:           City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, CA 92552  
Attention: Authority Executive Director
  
- If to City:                   City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, CA 92552  
Attention: City Manager

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

**8.6 Survival of Representations and Warranties.** All representations and warranties in the Project Documents shall survive the conveyance of the Site and have been or will be relied on by each of Authority and City notwithstanding any investigation made by City or Authority.

**8.7 No Third Parties Benefited.** This Agreement is made for the purpose of setting forth rights and obligations of Developer, Authority and City, and no other person shall have any rights hereunder or by reason hereof. There shall be no third party beneficiaries of this Agreement.

**8.8 Use of Consultants by City.** City or Authority may engage consultants to assist City and Authority in connection with matters to be undertaken or reviewed under this Agreement, such as in connection with the calculation of allowable housing costs or Back End Ratios. Developer shall cooperate fully with any such consultants.

**8.9 Binding Effect; Assignment of Obligations.** This Agreement shall bind, and shall inure to the benefit of, Developer, Authority and City and their respective successors and assigns. Developer shall not assign any of its rights or obligations under any Project Document without the prior written consent of the City Manager, which consent may be withheld in the City Manager’s sole

and absolute discretion. Any such assignment without such consent shall, at City's option, be void. In connection with the foregoing consent requirement, Developer acknowledges that City and Authority relied upon Developer's particular expertise in entering this Agreement and continues to rely on such expertise to ensure the satisfactory completion of the Improvements and the qualification of eligible buyers and each Homebuyer Property in conformity with this Agreement.

**8.10 Counterparts.** Provided that the written approval of the City Manager is first obtained, any Project Document, other than the City Developer Note and the Amended and Restated City Developer Note, may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

**8.11 Superiority of City Agreement.** Developer agrees and acknowledges that any agreements between Developer and a purchaser of each Homebuyer Property, or third parties, shall be subject and subordinate in all cases to this Agreement (including, without limitation, the Attachments hereto) and that in the event of conflict, this Agreement (including, without limitation, the Attachments hereto) shall control.

**8.12 Prior Agreements; Amendments; Consents.** This Agreement (together with the other Project Documents) contains the entire agreement among Authority, City and Developer with respect to the Site, and all prior negotiations, understandings and agreements with respect to such matters, including without limitation the Original AHA, are superseded by this Agreement and such other Project Documents. No modification of any Project Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 45 and Attachments 1 through 12 (which attachments are incorporated herein by reference), which constitutes the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Authority, City and Developer, and all amendments hereto must be in writing by the appropriate authorities of the Authority, City and Developer; provided that after conveyance of the Site to Developer, only the consent of City shall be required.

**8.13 Governing Law.** All of the Project Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Riverside or the United States District Court of the Central District of California, as City may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement or the other Project Documents. Assuming proper service of process, Developer also waives any objection regarding personal or *in rem* jurisdiction or venue.

**8.14 Severability of Provisions.** No provision of any Project Document that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Project Documents are hereby declared to be severable.

**8.15 Headings.** Article and section headings are included in the Project Documents for convenience of reference only and shall not be used in construing the Project Documents.

**8.16 Conflicts.** In the event of any conflict between the provisions of this Agreement and those of any other Project Document, this Agreement shall prevail; provided however that, with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

**8.17 Time of the Essence.** Time is of the essence of all of the Project Documents.

**8.18 Conflict of Interest.** No member, official or employee of City or Authority shall have any direct or indirect financial interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

**8.19 Warranty against Payment of Consideration.** Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

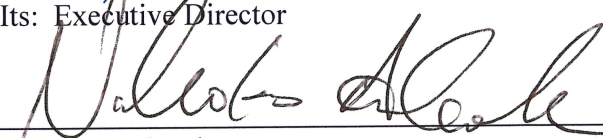
**8.20 Real Estate Commissions.** Each of City, the Authority and Developer represents to the other party that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the acquisition of all or part of the Site, and agrees to hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

**DEVELOPER:**

**HABITAT FOR HUMANITY, RIVERSIDE, INC.,**  
a California nonprofit public benefit corporation

By:   
Kathy Michalak  
Its: Executive Director

By:   
Nicholas Adcock  
Its: Treasurer

**CITY:**

**CITY OF MORENO VALLEY,** a municipal  
corporation

By: \_\_\_\_\_  
City Manager

**AUTHORITY:**

**MORENO VALLEY HOUSING AUTHORITY,** a  
public body, corporate and politic

By: \_\_\_\_\_  
Executive Director

**ATTACHMENT NO. 1**

**MAP**

[to come]

**ATTACHMENT NO. 2**  
**LEGAL DESCRIPTION OF THE SITE**

That real property located in the City of Moreno Valley, County of Riverside, State of California, described as follows:

THE EAST HALF OF LOT 106 AND ALL OF LOT 107 OF EDGEMONT GARDENS TRACT, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 15, PAGE 90 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN(s): 481-250-002 and 481-250-003

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The Site is also described as [to come: refer to description per parcel map with new APNs]



## ATTACHMENT NO. 3

### SCHEDULE OF PERFORMANCE

For the purposes of this Schedule of Performance, the “Date of Agreement” is May 1, 2013 and the First Amendment Date is September 8, 2015. The City Manager may extend by not more than ninety (90) days the time under this Schedule of Performance by which any obligation of Developer shall be performed.

- |  |  |
|--|--|
| 1. <u>Acknowledgment as to Fees.</u> Developer delivers acknowledgment to City as to fees as described under Section 3.1(j).   | Within twenty (20) days after the Date of Agreement  |
| 2. <u>Satisfaction of Conditions Precedent.</u> Developer shall satisfy the Conditions Precedent.  | Not later than sixty (60) days after the Date of Agreement.  |
| 3. <u>Closing.</u> The Site is conveyed to the Developer, and the City Developer Note is executed and delivered to the City, and the City Developer CC&Rs and the City Developer Deed of Trust are recorded and delivered to the City. | Within thirty (30) days after the satisfaction of the Conditions Precedent and not later than the ninetieth (90 <sup>th</sup> ) day after the Date of Agreement.   |
| 4. <u>Commencement of Construction.</u> The Director shall commence construction of the Improvements in one phase which consists of eight (8) Houses and related Improvements.   | Within ninety (90) days after the First Amendment Date.  |
| 5. <u>Completion of Construction.</u> Developer shall complete construction of the Improvements.   | Within one hundred eighty (180) days after the earlier of (i) the commencement of construction or (ii) the time established in this Schedule of Performance for the commencement of construction of the Improvements.  |
| 6. <u>Review of Eligibility of Program Participants.</u> The City Manager reviews eligibility.   | Within thirty (30) days after receipt of a complete package sufficient for City to review affordable housing costs and income eligibility, including all documentation required pursuant to the Agreement and under any loan proposed to be originated to the corresponding Program Participant. City determinations of eligibility are valid for six (6) months from the date made by City. |
| 7. <u>Conveyances to Initial Homebuyers.</u> The conveyances to the Initial Homebuyers are accomplished in conformity with this Agreement.   | Within one hundred eighty (180) days after the First Amendment Date.   |

**ATTACHMENT NO. 4**

**AMENDED AND RESTATED CITY DEVELOPER NOTE**

**PROMISSORY NOTE SECURED BY DEED OF TRUST**

\$3,291,026.00          Moreno Valley, California          \_\_\_\_\_, 201\_

FOR VALUE RECEIVED, HABITAT FOR HUMANITY, RIVERSIDE, INC., a California nonprofit public benefit corporation (the "Developer" or "Maker"), promises to pay to the CITY OF MORENO VALLEY, a municipal corporation (the "City" or "Holder"), at its offices at 14177 Frederick Street, Moreno Valley, California 92552, or at such other place as City may from time to time designate in writing, (a) the principal sum of Three Million Two Hundred Ninety One Thousand Twenty Six Dollars (\$3,291,026.00); and (b) all costs and expenses payable hereunder.

R E C I T A L S

**A.** This Amended and Restated Promissory Note (the "Note") is made pursuant to that certain Affordable Housing Agreement by and among the Developer, the Moreno Valley Housing Authority (the "Housing Authority") and the City, dated as of May 1, 2013 (the "Original AHA") as amended and restated by that certain Amended and Restated Affordable Housing Agreement by and among the Developer, the Housing Authority and the City dated as of September 8, 2015 (the "Agreement"). Upon execution of the Agreement by the parties hereto, the Original AHA shall be superseded by the Agreement.

**B.** Capitalized terms not described herein shall have the meanings ascribed to them in the Agreement.

NOW, THEREFORE, Developer agrees as follows:

**1. Agreement.** The principal sums hereunder have been and are being loaned by City to Developer in accordance with and pursuant to the Agreement, which is a public record on file in the office of the Secretary of the City. The terms of the Agreement are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. A default under any of the provisions of the Agreement shall be a default hereunder, and a default hereunder shall be a default under the Agreement. This Note shall be a nonrecourse note. Maker and Holder agree and acknowledge that in the event Developer fully performs under the Agreement, the result would be that payment will not be required under this Note, the overriding purpose of this Note being to provide assurance for the performance by the Developer under the Agreement. This Note shall be nonrecourse.

**2. Interest.** Interest shall accrue on the unpaid principal amount of this Note at the rate of three percent (3%) simple interest per annum in lawful money of the United States of America.

**3. Payment.** The entire balance due under this Note shall be paid to the City, or otherwise satisfied as provided below, upon the first to occur of: (i) the sale or other conveyance of the Site or portion thereof contrary to the Agreement; (ii) twenty-four (24) months after the Date of Agreement; (iii) the sale or other conveyance of the Site or portion thereof except in the event individual Homebuyer Properties are conveyed by Developer to Program Participants in conformity with Sections 6.1 to 6.4 of the Agreement; or (iv) the uncured default of Developer under the

Agreement, this Note or the City Developer Deed of Trust as amended by the Modification of City Developer Deed of Trust. Concurrent with the conveyance of a House to the initial Program Participant as to such House in conformity with the Agreement and the corresponding Homebuyer Loan Agreement, the City shall release the Developer from that portion of the Developer's liability under the City Developer Note and the City Deed of Trust and the amount of the City Developer Note shall be deemed to be reduced by one-eighth (1/8th) for each House so conveyed in conformity until no balance remains under the City Developer Note. The release of Developer as to one House shall not effect a release as to any other Houses or any other portion of the Site; each release shall be handled on a per-House basis.

4. **Form of Payments.** All amounts due hereunder are payable in immediately available funds and lawful monies of the United States of America.

5. **Application of Payments.** All payments shall be applied first to costs and fees owing hereunder, second to the payment of accrued interest and third to the payment of principal.

6. **Prepayment.** At any time, Developer may prepay in whole or in part the outstanding principal balance under this Note, together with all accrued and unpaid fees, costs and expenses payable hereunder, without penalty.

7. **Security.** This Note is secured by the Original City Developer Deed of Trust as modified by the Modification of City Developer Deed of Trust. The terms of the City Developer Deed of Trust as modified by the Modification of City Developer Deed of Trust are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. To the extent any unpaid balance hereunder is so secured by the City Developer Deed of Trust as modified by the Modification of City Developer Deed of Trust, a default under any of the provisions of the City Developer Deed of Trust as modified by the Modification of City Developer Deed of Trust shall be a default hereunder, and a default hereunder shall be a default under the City Developer Deed of Trust as modified by the Modification of City Developer Deed of Trust.

8. **Acceleration and Other Remedies.** Upon: (a) the occurrence of an Event of Default or (b) Developer selling, contracting to sell, giving an option to purchase, conveying, leasing, encumbering, or alienating the Site, or any interest in the Site, or suffering its title, or any interest in the Site to be divested, whether voluntarily or involuntarily, other than sales to Program Participants of Homebuyer Properties in conformity with the Agreement, without the prior written consent of the City, City may, at City's option, declare the outstanding principal amount of this Note, together with the then accrued and unpaid interest thereon and other charges hereunder, and all other sums secured by the City Developer Deed of Trust, to be due and payable immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice, all as further set forth in the City Developer Deed of Trust. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this Note, may be added to the principal hereunder, and shall accrue interest as provided herein. City shall at all times have the right to proceed against any portion of the security for this Note in such order and in such manner as such City may consider appropriate, without waiving any rights with respect to any of the security. Any delay or omission on the part of the City in exercising any right hereunder, under the Agreement or under the City Developer Deed of Trust shall not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or

remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare an Event of Default for failure to make prompt or complete payment.

**9. Alternate Rate.** Upon the occurrence of any Event of Default, or upon the maturity hereof (by acceleration or otherwise), the entire unpaid principal sum, at the option of City, shall bear interest, from the date of occurrence of such Event of Default or maturity and after judgment and until collection, at the "Alternate Rate", such rate being the highest interest rate then permitted by law by a City within the State of California. Interest calculated at the Alternate Rate, when and if applicable, shall be due and payable immediately without notice or demand. Developer agrees that in the event of any Event of Default, City will incur additional expense in servicing the loan evidenced by this Note and will suffer damage and loss resulting from such Event of Default. Developer agrees that in such event City shall be entitled to damages for the detriment caused thereby, which damages are extremely difficult and impractical to ascertain. Therefore, Developer agrees that the Alternate Rate (as applied to the unpaid principal balance, accrued interest, fees, costs and expenses incurred) is a reasonable estimate of such damages to City, and Developer agrees to pay such sum on demand.

**10. Waivers.** Developer and all endorsers, guarantors and sureties hereof jointly and severally waive presentment, protest, notice of protest, notice of dishonor, diligence in collection, and the benefit of any exemption under any homestead exemption laws, if applicable.

**11. Consents.** Developer and all endorsers, guarantors and sureties consent to: (a) any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Developer, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Developer or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

**12. Successors and Assigns.** Whenever "City" is referred to in this Note, such reference shall be deemed to include the City of Moreno Valley and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Developer, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

**13. Usury.** It is the intention of Developer and City to conform strictly to the Interest Law, as defined below, applicable to this loan transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

- (a) the provisions of this paragraph shall govern and control;
- (b) neither Developer nor Developer's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;
- (c) any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this Note by City or, if this Note shall have been paid in full, refunded to Developer; and
- (d) the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to City for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Note. For purposes of this Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that City may from time to time charge Developer, and under which Developer would have no claim or defense of usury under the Interest Law.

**14. Costs of Enforcement.** Developer agrees to pay upon demand all reasonable costs and expenses, including attorneys' fees and disbursements (including appeals), incurred by the City of this Note to enforce the terms hereof. In addition to the foregoing award of attorneys' fees, City shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to enforce any judgment in connection with this Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

**15. Miscellaneous.** Time is of the essence hereof. If this Note is now, or hereafter shall be, signed by more than one party or person, it shall be the joint and several obligation of such parties or persons (including, without limitation, all makers, endorsers, guarantors and sureties), and shall be binding upon such parties and upon their respective successors and assigns. This Note shall be governed by and construed under the laws of the State of California. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Riverside or the United States District Court of the Central District of California, as City hereof may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Note. Developer also waives any objection regarding personal or in rem jurisdiction or venue.

(signatures on following page)

**“DEVELOPER”**

**HABITAT FOR HUMANITY, RIVERSIDE, INC.,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Kathy Michalak  
Its: Executive Director

By: \_\_\_\_\_  
Nicholas Adcock  
Its: Treasurer

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

ATTACHMENT NO. 5

MODIFICATION OF CITY DEVELOPER DEED OF TRUST

RECORDING REQUESTED  
BY AND  
WHEN RECORDED MAIL  
TO:

City of Moreno Valley  
Financial & Management Services  
Financial Resources Division  
14177 Frederick Street  
Moreno Valley, California 92552  
Attention: City Manager

APN: \_\_\_\_\_

[Space above for recorder.]  
This document is exempt from the payment of a recording  
fee pursuant to Government Code Section Government  
Code Section 27383.

MODIFICATION AGREEMENT AMENDING DEED OF TRUST

The undersigned agree that certain promissory note dated as of March 19, 2014, in the original principal amount of Two Million Six Hundred Twenty Seven Thousand Dollars (\$2,627,000.00) (the "Original City Developer Note") executed by **HABITAT FOR HUMANITY, RIVERSIDE, INC.**, a California nonprofit public benefit corporation ("Maker" or "Trustor") in favor of the **CITY OF MORENO VALLEY**, a municipal corporation ("Beneficiary") has been amended and restated by that Amended and Restated City Developer Note of even date herewith (the "Amended and Restated City Developer Note"), which Amended and Restated City Developer Note increases the amount loaned by Beneficiary to Trustor and concerns that certain property described in Exhibit "A" hereto (the "Property").

The Original City Developer Promissory Note is secured by a deed of trust ("Original City Developer Deed of Trust") dated as of March 19, 2014 executed by Maker, as "Trustor" in favor of Beneficiary, recorded August 15, 2014 (the "Original Recording Date") as Document No. 2014-0310289 (the "Original Deed of Trust), in the Official Records in the Office of the County Recorder of Riverside County, California, as modified herein.

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT



The original principal amount loaned by Beneficiary to Maker, as set forth in the Original City Developer Note and reflected in the first paragraph hereof, has been increased to the amount of Three Million Two Hundred Ninety One Thousand Twenty Six Dollars (\$3,291,026.00) (the "Amended and Restated City Developer Note Amount") by the Amended and Restated City Developer Note. Effective as of the recording of this instrument (which is entitled "Modification Agreement Amending Deed of Trust"), the Amended and Restated City Developer Note Amount shall be deemed to be secured by the Original Deed of Trust as amended by this Modification Agreement Amending Deed of Trust) effective as of the Original Recording Date.

**"BENEFICIARY/HOLDER"**

**CITY OF MORENO VALLEY,**  
a municipal corporation

By: \_\_\_\_\_  
Assistant City Manager

**"TRUSTOR/MAKER"**

**HABITAT FOR HUMANITY, RIVERSIDE,**  
**INC.,** a California nonprofit public benefit  
corporation

By: \_\_\_\_\_  
Kathy Michalak  
Its: Executive Director

By: \_\_\_\_\_  
Nicholas Adcock  
Its: Treasurer

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT



**EXHIBIT "A"**

**DESCRIPTION OF THE PROPERTY**

That real property located in the City of Moreno Valley, County of Riverside, State of California, described as follows:

[to come]

APN: \_\_\_\_\_

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed under the foregoing Modification Agreement Amending Deed of Trust by Habitat for Humanity, Riverside, Inc., a California nonprofit public benefit corporation, to the City of Moreno Valley (the "City") as to the following property:

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

[legal description: to come]

APN: [to come]

is hereby accepted by the Assistant City Manager of the City on behalf of the City pursuant to authority conferred by action of the City Council of the City by Resolution No. \_\_\_\_\_ of the City Council, and the City as grantee consents to recordation thereof by its duly authorized officer.

CITY OF MORENO VALLEY

\_\_\_\_\_  
Thomas DeSantis  
Its: Assistant City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
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\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

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\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

ATTACHMENT NO. 6

HOMEBUYER LOAN AGREEMENT

THIS HOMEBUYER LOAN AGREEMENT (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 201\_ ("Date of Homebuyer Loan Agreement") by and among [NAME OF HOMEBUYER], a [capacity] ("Program Participant" or "Trustor") and the CITY OF MORENO VALLEY, a municipal corporation (the "City" or "Beneficiary").

R E C I T A L S

A. The City and the Moreno Valley Housing Authority (the "Housing Authority") approved on September 8, 2015 and entered into an agreement entitled "Amended and Restated Affordable Housing Agreement" (the "Affordable Housing Agreement") with Habitat for Humanity, Riverside, Inc. (the "Seller") under which Seller purchased certain property (the "Site") from the City and was required to build eight (8) houses thereon.

B. Seller divided the Site into not fewer than eight (8) lots. Subsequently, Program Participant has agreed with Seller that Seller and Program Participant shall construct one (1) single-family dwelling (the "Program Participant House") on that certain property known as \_\_\_\_\_ [insert address or APN], Moreno Valley, California, and more particularly xx described in Exhibit "A" hereto (the "Property").

C. Program Participant requires assistance to purchase the Property and would not be able to purchase the Property without such assistance. Program Participant is a Very Low Income household (as defined in Section 4, below) and currently earns not more than fifty percent (50%) of the current annual median income for the Riverside County area, as those terms are defined by California Health and Safety Code Sections 50105 and 50052.5.

D. Program Participant has represented to the City and to the Seller that Program Participant and Program Participant's immediate family intend to reside at the Program Participant House on the Property at all times throughout the term of this Agreement.

E. The City desires to assist persons of Very Low Income to purchase residential property as part of its efforts to increase, improve, and preserve Very Low Income housing available at an affordable housing cost within the corporate limits of the City.

F. Seller and Program Participant have entered into an agreement in the form of Exhibit "G" hereto (the "Habitat Homebuyer Purchase and Sale Agreement") under which Seller will sell the Property to the Program Participant. Seller has delivered to each of the City and the Housing Authority, prior to the Date of Homebuyer Loan Agreement, the Habitat Homebuyer Purchase and Sale Agreement, fully executed by both parties thereto.

G. The City wishes to lend, and Program Participant wishes to borrow, funds to assist Program Participant to purchase the Property upon the terms and conditions set forth herein.

H. Program Participant represents and warrants to City that Program Participant and Program Participant's immediate family intend to reside in the Property as the family's principal residence at all times during the period of Program Participant's ownership of the Property.

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

I. For an approximately 45-year period as set forth in Section 4 hereof as the “Affordability Period”, the Property may only be transferred to Very Low Income Households at an Affordable Housing Cost (“Eligible Persons and Families”) which transferee(s) execute agreements with the City substantially in the form of this Agreement along with the attachments hereto, or assumptions in form acceptable to and approved by City.

NOW, THEREFORE, for good and valuable consideration the parties agree as follows:

1. Homebuyer Senior Loan and Homebuyer Junior Loan. In connection with the purchase of the Property by the Program Participant from the Seller in conformity with the Affordable Housing Agreement, the City shall be deemed to have loaned to Program Participant the amount of [to come: \$245,000 less the sum of the down payment and the original principal amount of the Homebuyer Senior Note], which loan is referred to herein as the “Homebuyer Senior Loan.” The Homebuyer Senior Loan shall be entered by the “Homebuyer Senior Note” as described below. No money will be disbursed by the City at Closing in connection with the Homebuyer Senior Loan. The closing of the Homebuyer Senior Loan shall be concurrent with the conveyance of the Property to the Program Participant under the Habitat Homebuyer Purchase and Sale Agreement. After the recording of the deed from Seller conveying title to the Property to the Program Participant (the “Seller Deed”, which shall be substantially in the form of Exhibit “K” hereto), the Program Participant shall make payments to City as required under the Homebuyer Senior Loan. The Homebuyer Senior Note requires that Program Participation make scheduled monthly payments as further described in the Homebuyer Senior Note. City will administer the allocation of payments between City and Seller; such allocation is a matter with which Program Participant need not be concerned.

Prior to the conveyance of the Property to Program Participant by Seller, Program Participant shall execute and deliver to the City a promissory note in favor of the City as holder, in the form of the “Homebuyer Senior Note” attached hereto as Exhibit “B” and incorporated herein. Program Participant shall also execute and deliver to the City a deed of trust, duly recorded, encumbering the Property which shall secure the Homebuyer Senior Note (the “Homebuyer Senior Deed of Trust”), in the form of Exhibit “C” attached hereto and incorporated herein. The terms of the Homebuyer Senior Note are set forth in subsections (a), (b) and (c) of this Section 1. The Homebuyer Senior Note requires that Program Participant make scheduled monthly payments as further described in the Homebuyer Senior Note.

Concurrently with the execution and delivery of the Homebuyer Senior Note, Program Participant will execute and deliver to Seller a promissory note described in the Affordable Housing Agreement as the “Habitat Homebuyer Note” (as depicted as Exhibit “I” hereto). The Habitat Homebuyer Note will be secured by a deed of trust (the “Habitat Homebuyer Deed of Trust”) in the form of Exhibit “J” hereto; the Habitat Homebuyer Deed of Trust will be junior and subordinate to the Homebuyer Senior Deed of Trust. The original principal amount of the Habitat Homebuyer Note is to be in an amount not greater than the original principal amount of the Homebuyer Senior Note. The interest rate charged and time of payments as to the Habitat Homebuyer Note shall be the same as that established by the Homebuyer Senior Note.

In addition, Program Participant shall execute and deliver to the City, duly recorded, the “City Homebuyer Covenants” (in the form of Exhibit “H” to this Agreement), duly recorded. By this agreement and under the City Homebuyer Covenants, the Program Participant agrees that the Property is subject to and Program Participant agrees to comply with the provisions of each of (i) the

“Authority Deed” (as recorded as Document No. 2014-0310288 among the official land records of the County Recorder of the County of Riverside) and that certain Declaration of Conditions, Covenants and Restrictions recorded as Document No. 2014-0310290 among the official land records of the County Recorder of the County of Riverside (the “City Developer CC&Rs”). Program Participant agrees and acknowledges that Program Participant has been provided with and has reviewed a copy of each of the Authority Deed and the City Developer CC&Rs and each and every document referenced therein.

(a) Homebuyer Senior Note. As more particularly provided in the Homebuyer Senior Note, the essential terms and conditions of the Homebuyer Senior Note are as follows:

(i) Homebuyer Senior Note Provisions. The Homebuyer Senior Note shall be for the original principal amount of [to come: \$245,000 less the sum of the down payment and the original principal amount of the Habitat Homebuyer Note] (the “Homebuyer Senior Note Amount”). Payment shall be secured by the Homebuyer Senior Deed of Trust. The Homebuyer Senior Note shall contain the following provisions:

(aa) Interest Rate. The Homebuyer Senior Note Amount shall accrue no (0%) interest unless and until an event of acceleration occurs as described in the Homebuyer Senior Note.

(bb) Time of Payment. There are no regular, scheduled payments required; payment is due upon occurrence of an Event of Default as more particularly set forth in the Homebuyer Senior Note.

(cc) Acceleration. The whole of the Homebuyer Senior Note Amount and all other payments due hereunder shall become due and immediately payable to City by Program Participant upon the occurrence of any one of the following events of acceleration:

(1) Program Participant sells or transfers the Property (or any part thereof) by any means, including, without limitation, the lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (A) a sale of the Property to a qualified Very Low Income Household at an Affordable Housing Cost with City’s prior written approval accomplished in strict conformity with this Agreement and the City (acting in its sole discretion) expressly consents to the assumption of the Homebuyer Senior Loan, or (B) the transfer of the Property solely as a result of the marriage, divorce, incompetency or death of one or more individuals constituting Program Participant, so long as the transferee(s) give written notice supported by reasonable evidence of such event to City within thirty (30) days of its occurrence and the transferee(s) assume Program Participant’s obligations under this Agreement, by execution of an assignment and assumption agreement to be provided by City, or (C) a sale or transfer which under federal law would not, by itself, permit City to exercise a due on sale or due on encumbrance clause;

(2) Program Participant is in violation of this Agreement or the Homebuyer Senior Note.

(3) Program Participant fails to occupy the Property as Program Participant’s principal residence or is in default of any other obligation under this Agreement.



At the request of Program Participant, and for a specific occasion, City may, in its sole and absolute discretion, in writing waive the requirements of this subsection (cc) and defer repayment and/or extend the term of the Homebuyer Senior Note Amount. Any waiver or deferment shall be on a case by case basis, and no future rights for waiver or deferment shall arise or be implied.

(dd) Security. Payment under the Homebuyer Senior Note, shall be secured by a deed of trust and rider thereto encumbering the Property, substantially in the form of the Homebuyer Senior Deed of Trust. The Homebuyer Senior Deed of Trust shall be executed by Program Participant, as trustor, in favor of City, as beneficiary. The Homebuyer Senior Deed of Trust shall be subordinate only to the City Developer CC&Rs.

(ee) No Subordination. The lien that secures payment under the Homebuyer Senior Note shall not be subordinate to any other deed of trust.

(ff) Prepayment. Program Participant may prepay amounts under the Homebuyer Senior Note. However, the restrictions of the City Developer CC&Rs and the Homebuyer Senior Deed of Trust shall continue in full force and effect, notwithstanding any such prepayment or other payments without regard to amount.

(gg) Assumption Under Homebuyer Senior Note. The Homebuyer Senior Note may be assumed only by a qualified subsequent purchaser of the Property which purchaser has obtained the prior written approval of the City.

(hh) Participant's Waivers. As to the Homebuyer Senior Note, Program Participant waives any rights to require City to: (i) demand payment of amounts due (known as "presentment"), (ii) give notice that amounts due have not been paid (known as "notice of dishonor") and (iii) obtain an official certification of nonpayment (known as "protest").

(b) Repayment Under the Homebuyer Senior Note. If there is an event of acceleration pursuant to Section 1(a)(i)(cc)(1) above, all amounts payable under the Homebuyer Senior Note shall, without regard to the schedule for payments, be calculated and Program Participant shall pay all amounts due under the Homebuyer Senior Note.

(i) Homebuyer Senior Note Amount Due In Full. The whole of the Homebuyer Senior Note Amount shall be due in full when an event of acceleration occurs. After paying all costs and fees relating to the transaction, if any (such as escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs), the proceeds of any such transaction (or, in the case of any event of acceleration other than a sale, an amount representing the appraised value of the Property as determined by an appraiser retained for such purpose by the City) shall be distributed or applied in the following order of priority:

(aa) Repayment to City of the principal amount due under the Homebuyer Senior Note;

(bb) Payment to City of any other amounts due under the Homebuyer Senior Note;

(cc) Payment to City of any other amounts due under the Homebuyer Loan Agreement; and

(dd) Payment to Seller for any amounts due under the Habitat Homebuyer Note; and

(ee) Payment to the Seller for any amounts due from the Program Participants to the Seller under the Habitat Homebuyer Purchase and Sale Agreement.

(c) Habitat Homebuyer (Junior) Note. The essential terms and conditions of the Habitat Homebuyer (Junior) Note are as follows:

(i) Habitat Homebuyer (Junior) Note Provisions. The Habitat Homebuyer Note shall be for the original principal amount of [to come: \$245,000 less the sum of the down payment and the original principal amount of the Homebuyer Senior Note] (the “Habitat Homebuyer Note Amount”). Payment shall be secured by the Habitat Homebuyer Deed of Trust (which shall be junior and subordinate to the Homebuyer Senior Deed of Trust). The Habitat Homebuyer Note shall contain the following provisions:

(aa) Interest Rate. The Habitat Homebuyer Note Amount shall accrue no (0%) interest unless and until an event of acceleration occurs as described in the Habitat Homebuyer Note.

(bb) Time of Payment. Regular monthly payments, due on the first date of each month commencing after recording of the Seller Deed, shall be made by Program Participant to Seller. The amount of such payments is set forth on the Habitat Homebuyer Note. Program Participant shall make all payments under the Habitat Homebuyer Note.

(cc) Acceleration. The whole of the Habitat Homebuyer Note Amount and all other payments due hereunder shall become due and immediately payable to Seller by Program Participant (on a basis junior and subordinate to payments under the Homebuyer Senior Note) upon the occurrence of any one of the following events of acceleration:

(1) Program Participant sells or transfers the Property (or any part thereof) by any means, including, without limitation, the lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (A) a sale of the Property to a qualified Very Low Income Household at an Affordable Housing Cost with City’s prior written approval accomplished in strict conformity with this Agreement, or (B) the transfer of the Property solely as a result of the marriage, divorce, incompetency or death of one or more individuals constituting Program Participant, so long as the transferee(s) give written notice supported by reasonable evidence of such event to City within thirty (30) days of its occurrence and the transferee(s) assume Program Participant’s obligations under this Agreement, by execution of an assignment and assumption agreement to be provided by City, or (C) a sale or transfer which under federal law would not, by itself, permit City to exercise a due on sale or due on encumbrance clause;

(2) Program Participant is in violation of this Agreement or the Habitat Homebuyer Note.

(3) Program Participant fails to occupy the Property as Program Participant's principal residence or is in default of any other obligation under this Agreement.

At the request of Program Participant, and for a specific occasion, Habitat may, in its sole and absolute discretion, in writing waive the requirements of this subsection (cc) and defer repayment and/or extend the term of the Habitat Homebuyer Note Amount. Any waiver or deferment shall be on a case by case basis, and no future rights for waiver or deferment shall arise or be implied.

(dd) Security. Payment under the Habitat Homebuyer Note, shall be secured by a deed of trust and rider thereto encumbering the Property, substantially in the form of the Habitat Homebuyer Deed of Trust. The Habitat Homebuyer Deed of Trust shall be executed by Program Participant, as trustor, in favor of Habitat, as beneficiary. The Habitat Homebuyer Deed of Trust shall be subordinate only to the City Developer CC&Rs and to the Homebuyer Senior Deed of Trust.

(ee) Subordination. The lien that secures payment under the Habitat Homebuyer Note shall be subordinate to the Homebuyer Senior Deed of Trust but not to any other deed of trust.

(ff) Prepayment. Program Participant may prepay amounts under the Habitat Homebuyer Note; provided that Program Participant is aware that payments due under the Homebuyer Senior Note have priority over payments due under Habitat Homebuyer Note. In addition, the restrictions of each of the City Developer CC&Rs, the Homebuyer Senior Deed of Trust and the Habitat Homebuyer Deed of Trust shall continue in full force and effect, notwithstanding any such prepayment or other payments without regard to amount.

(gg) Assumption Under Habitat Homebuyer Note. The Habitat Homebuyer Note may be assumed only by a qualified subsequent purchaser of the Property which purchaser has obtained the prior written approval of the City.

(hh) Participant's Waivers. As to the Habitat Homebuyer Note, Program Participant waives any rights to require City to: (i) demand payment of amounts due (known as "presentment"), (ii) give notice that amounts due have not been paid (known as "notice of dishonor") and (iii) obtain an official certification of nonpayment (known as "protest").

(d) Repayment Under the Habitat Homebuyer (Junior) Note. If there is an event of acceleration pursuant to Section I(a)(i)(cc)(1) above, all amounts payable under the Habitat Homebuyer Note shall, without regard to the schedule for payments, be calculated and Program Participant shall pay all amounts due under the Homebuyer Senior Note, then amounts due under the Habitat Homebuyer Note. The whole of the Habitat Homebuyer Note Amount shall be due in full when an event of acceleration occurs.

2. Maintenance of Property; Insurance. Program Participant shall maintain the improvements and landscaping on the Property in the manner prescribed by the City Developer CC&Rs. [A swale][A Retention Basin] is located on the Property, the maintenance of which is essential for proper drainage at and adjacent to the Property. Program Participant shall implement and maintain the Property in conformance with the "Home Owner BMP Maintenance Plan" which is

set forth as Exhibit “L” hereto. Program Participant shall maintain, during the term of the City Homeowner Loan, an all risk property insurance policy insuring the Property in an amount equal to the full replacement value of the structures on the Property. The policy shall name City as loss payee and shall contain a statement of obligation on behalf of the carrier to notify City of any material change, cancellation or termination of coverage at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. Program Participant shall transmit a copy of the certificate of insurance and loss payee endorsement to City within thirty (30) days of the effective date of this Agreement, and upon request by City, Program Participant shall transmit to City further copies of the certificate of insurance and a loss payee endorsement. The copy of the certificate of insurance and loss payee endorsement shall be transmitted to City at the address set forth in Section 24 hereof. Any certificate of insurance must be in a form, content, and with companies reasonably acceptable to City.

3. Due on Sale, Transfer or Refinancing. Program Participant agrees to notify the City not less than thirty (30) days prior to (i) the sale or transfer of the Property or (ii) any refinancing of the lien of the Homebuyer Senior Deed of Trust or any lien on the Property. The Homebuyer Senior Loan and all interest accrued thereon shall be due and payable upon (i) such sale or transfer, (ii) the refinancing of any lien against the Property, or (iii) Program Participant is no longer an occupant of the Property pursuant to Section 5 of this Agreement or is in material default of any other obligation pursuant to this Agreement. If the City is asked to forbear from enforcing the due-on-sale clause or to allow the assumption of the loan evidenced by the Homebuyer Senior Note, the party or parties so requesting shall prepare and submit to the City a complete package containing all information necessary to demonstrate and verify the income of the proposed transferee, the proposed housing cost, and all other information reasonably requested by the City Manager or which would have been required had such proposed transferee attempted to qualify as original Program Participant under the terms of the Agreement. At the request of Program Participant, the City may, in its sole discretion, waive the requirements of this Section 3 and extend the term of that of the Homebuyer Senior Note.

4. Sale to Very Low Income Household that is an Eligible Homebuyer. For a period (“Affordability Period”) commencing upon the date of the recording of the City Developer CC&Rs and terminating on the forty-fifth (45th) anniversary thereof (“Affordability Period Termination Date”), the City Homeowner Note Amount will not become due and payable if, in strict conformity with all requirements of this Agreement, Trustor sells or otherwise conveys the Property to a Very Low Income Household at an Affordable Housing Cost (“Eligible Persons and Families”) with the prior written approval of the City, the purchaser is an “Eligible Homebuyer” (as defined below) and the purchaser assumes the City Homeowner Note and the Agreement by an assignment and assumption agreement which is acceptable to the Beneficiary. Each purchaser shall be a Very Low Income Household, purchasing at an Affordable Housing Cost and with a “Back End Ratio” (as defined below) that does not exceed forty three percent (43%) of household income, and which executes and delivers to City agreements with the City substantially in the form of this Agreement along with the attachments hereto, or assumptions in form acceptable to and approved by City.

“Very Low Income” or “Very Low Income Households” shall mean and include: Very Low Income households as defined in Health & Safety Code Section 50105. Very Low Income Households includes very low income households, as defined in Health & Safety Code Section 50105 and extremely low income households, as defined in Health & Safety Code Section 50106; provided that in each event, the housing cost must be “Applicable Housing Cost” as defined below.

“Affordable Housing Cost” means as follows:

“Affordable Housing Cost” for each such subsequent owner (namely, Program Participant and all successors thereto during the 45-year Affordability Period) shall be as defined in Health & Safety Code Section 50052.5 (or its successor statute) and the implementing regulations thereto promulgated by the Housing and Community Development Department of the State of California. As of the date of the Agreement, Affordable Housing Cost means a monthly housing cost which does not exceed thirty percent (30%) times fifty percent (50%) of Median Income adjusted for family size appropriate to the Property. Pursuant to Section 50052.5, if the Property has three bedrooms the presumed household size for purposes of the Agreement is four persons.

“Eligible Homebuyer”, for purposes of subsequent sales of the Property, means a household that (i) is a Very Low Income Household”, (ii) has satisfactorily completed a Homebuyer Training Program and such completion is certified by each of Developer and by a HUD-certified homebuyer education counselor, which must be evidenced by the delivery of a Homebuyer Training Certificate; (iii) is acquiring a House for owner occupancy by such household at a price which does not exceed Affordable Housing Costs and with a Back End Ratio that does not exceed forty three percent (43%) of such household’s income; and (iv) has executed such instruments as are approved by City acknowledgment that the Property is subject to the “City Homebuyer Covenants” (as defined below). For purposes of this paragraph, “Back End Ratio” means the ratio of (i) monthly payments as required on all obligations of a property owner or prospective property owner, including without limitation all housing debt, consumer debt, and any other debt, to (ii) the gross income of the property owner or prospective property owner; for this purpose, gross income of a household shall be determined in accordance with 24 CFR Part 5. Where there is an obligation as to which monthly payments are not expressed as a liquidated amount (but excepting therefrom the “Homebuyer Senior Loan”, as defined in the City Loan Agreement, should such loan remain outstanding), payments are to be imputed based upon the full satisfaction of such obligations over five (5) years (assuming substantially level payments) or less or such other amortization period as may be approved on a case-by-case basis by City.

Subject to the prior written approval of the City having first been obtained, if the Property is sold during the Affordability Period by the Trustor to a Very Low Income Household, and the Sales Price does not exceed an “Affordable Housing Cost” to such Buyer, then so long as the Trustor is not in default of the Agreement, the City Homebuyer Note may be assumed by the Eligible Buyer by an assignment and assumption agreement which is acceptable to the Beneficiary. Upon the effective date of such assignment and assumption with the prior written approval of the City (which approval may require payment of an Equity Share), the assigning Trustor shall no longer be liable for any further obligations under the Agreement or the City Homebuyer Note which accrue after the date of such assignment and assumption. In order to verify the buyer’s status as a Very Low Income Household, Trustor shall submit to the City the identity of the proposed buyer and adequate information evidencing the income and household size of the proposed buyer. Said income information shall be submitted together with the notice of proposed sale pursuant to Section 2 of the Agreement not less than thirty (30) days prior to opening of escrow for the proposed sale and shall include original or true copies of pay stubs, income tax records or other financial documents in order that the City may determine and verify the household income of the proposed buyer to determine whether the buyer is a Very Low Income Household and whether the Property is being transferred to such buyer at Affordable Housing Cost. If the City is unable to verify the buyer’s income as provided herein prior to the proposed sale, then the buyer’s income shall be deemed to exceed the maximum allowable income limit for Eligible Persons and Families.



The income of co-signers (individuals who sign only the Homebuyer Senior Promissory Note) and co-mortgagors (individuals who sign both the Homebuyer Senior Promissory Note and the grant deed) will be included for determining whether Program Participant is a Very Low Income Household, if such co-signers and co-mortgagors are part of Program Participant's household and are residing in the Property.

5. Occupancy Standards. The Property shall be used as the personal residence of Program Participant and Program Participant's immediate family and for no other purpose. Program Participant shall not enter into an agreement for the rental or lease of the Property. The maximum number of occupants who may reside at the Property at any time during the Affordability Period, which in no event shall exceed two (2) persons per each living and sleeping area of the Property (excluding kitchen, bathroom(s), hallways, other non-living/sleeping areas.) For example, a house with two bedrooms and a living room (but no family room/den) would be limited to occupancy by six persons; a house with three bedrooms, a separate living room, and a separate family room/den would be limited to occupancy by ten persons, etc. The HQS occupancy standard is set forth in and established by United States Department of Housing and Urban Development (HUD) and as of the date of the Program Guidelines the HQS occupancy standard is two (2) persons per each living and sleeping area in a home/dwelling. Program Participant shall, upon demand by City, submit to City an affidavit of occupancy verifying Program Participant's compliance with this Section 5. Such affidavit may be required by City on an annual basis.

6. Income Information. Program Participant has submitted an eligibility verification form to the City prior to execution of this Agreement. Program Participant represents and warrants to the City that all information Program Participant has provided and will provide in the future is and will be true, correct and complete. Program Participant acknowledges that the City is relying upon Program Participant's representations that Program Participant's income does not exceed fifty percent (50%) of the area median income and would not have entered into this Agreement if Program Participant's income exceeded fifty percent (50%) of the area median income.

7. Loan Servicing. The City may contract with a private lender to originate and service the Homebuyer Senior Loan.

8. Married Sole and Separate Property. An individual taking title in this manner is subject to special requirements because of California Community Property Laws and the Internal Revenue Code. If Program Participant is legally separated, or has filed for divorce and a legal property disposition agreement exists between Program Participant and Program Participant's spouse, a quitclaim deed from Program Participant's spouse and a copy of the property disposition agreement may be required by City. In the absence of an existing legal property disposition agreement between Program Participant and Program Participant's spouse, as a condition of approval of Homebuyer Senior Loan, a quitclaim deed, a special agreement and a release of interest signed by both Program Participant and Program Participant's spouse, after consultation with an attorney, may be required by City. Additionally, if Program Participant's spouse is to reside in the household, their combined income must be included in the income test for eligibility under this Agreement.

9. [Reserved].

10. Covenants. Program Participant acknowledges that the Property is subject to recorded covenants in the form of Exhibit D hereto (the "City Developer CC&Rs"), which City Developer CC&Rs were recorded among the official land records of the County Recorder of

Riverside County (“Official Records”) on August 15, 2014 as Document No. 2014-0310290; the City Developer CC&Rs restrict use of the Property to owner-occupancy by households of Very Low Income, and restrict the price at which the Property may be sold or resold, for an approximately 45-year period as more fully set forth therein. In addition, Program Participant agrees that Program Participant and the City shall execute and cause to be recorded among the official land records of Riverside County, California, the “City Homebuyer Covenants”, substantially in the form of Exhibit H attached hereto (the “City Homebuyer Covenants”), in which Program Participant agrees that, for an approximately 45-year period (which extends beyond the duration of the City Developer CC&Rs) the Property shall only be owned by Program Participant or other persons or families of Very Low Income available at an affordable housing cost, as those terms are defined in California Health & Safety Code Sections 50105 and 50052.5, and that Program Participant shall not discriminate against any person or group of persons on the basis of race, color, religion, sex, marital status, national origin or ancestry; additional provisions are contained in the City Homebuyer Covenants, a copy of which has been provided to and has been reviewed by Program Participant.

11. Indemnification. The Program Participant shall defend, indemnify and hold harmless the City and the Housing Authority and their respective officers, agents, employees, representatives and volunteers from and against any loss, liability, claim or judgment relating in any manner to the Property or this Agreement. The Program Participant shall remain fully obligated for the payment of property taxes and assessments related to the Property. There shall be neither reduction in taxes for Program Participant, nor any transfer of responsibility to the City or the City to make such payments, by virtue of the moneys loaned as evidenced by the Homebuyer Senior Note.

12. No Third Party Beneficiaries of this Agreement Except for Housing Authority. The Housing Authority shall be deemed to be a third party beneficiary of this Agreement. Except for the Housing Authority, there shall be no third party beneficiaries as to this Agreement.

13. Defaults. Failure or delay by either party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Agreement; provided, however, if such default is of the nature requiring more than thirty (30) days to cure, the defaulting party shall avoid default hereunder by commencing to cure within such thirty (30) day period and thereafter diligently pursuing such cure to completion. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

14. Remedies. City shall be entitled to all legal and equitable remedies available under the law upon the default of the terms of this Agreement by Program Participant. Such remedies may include, without limitation, (a) specific performance of the terms of the Agreement, (b) disgorgement of any amount of consideration received for the Property that exceeds an Affordable Housing Cost, and (c) an order to pay attorneys’ fees, as set forth in Section 25 herein.

15. Non Waiver. Failure to exercise any right City may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.

16. Documents. Program Participant is aware that the City has prepared certain documents to implement the Program and secure repayment of the Homebuyer Senior Loan; Seller has reviewed and approved such instruments prior to executing the Affordable Housing Agreement. Program Participant has reviewed and agrees to execute the following documents prior to receiving the Homebuyer Senior Loan:

- (a) Disclosure Statement (Exhibit “F”);
- (b) Homebuyer Senior Note (Exhibit “B”);
- (c) Homebuyer Senior Deed of Trust (Exhibit “C”);
- (d) City Homebuyer Covenants (Exhibit “H”);
- (e) Habitat Homebuyer Note (Exhibit “I”);
- (f) Habitat Homebuyer Deed of Trust (Exhibit “J”);
- (g) An instrument substantially in the form of Exhibit “E” hereto (“Notice of Affordability Restrictions”); and
- (h) Seller Deed (Exhibit “K”).

Program Participant agrees and acknowledges that each of the Homebuyer Senior Deed of Trust, as well as the Habitat Homebuyer Deed of Trust shall be recorded with the County Recorder of the County of Riverside and, along with the City Developer CC&Rs, the City Homebuyer Covenants and a Notice of Affordability Restrictions, shall appear of record with respect to and as encumbrances to the Property.

17. Further Assurances. The Program Participant shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form, as the City shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Agreement.

18. Governing Law. The Program Participant hereby agrees to comply with all ordinances, rules, and regulations of City and the Housing Authority. Nothing in this Agreement is intended to be, nor shall it be deemed to be, a waiver of any City ordinance, rule, or regulation. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Riverside, State of California, or in the Federal District Court in the Central District of California.

19. Amendment of Agreement. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by the Program Participant and City.



20. City May Assign. City may, at its option, assign its right to receive repayment of the loan proceeds without obtaining the consent of the Program Participant.

21. Program Participant Assignment Prohibited. In no event shall Program Participant assign or transfer any portion of this Agreement without the prior express written consent of the City, which consent may be given or withheld in the City’s sole discretion. No assumption of the loan made by City as evidenced by the Homebuyer Senior Note shall be permitted at any time. This section shall not prohibit the City’s right to assign all or any portion of its rights to the loan proceeds hereunder.

22. Relationship of Program Participant and City. The relationship of Program Participant and City pursuant to this Agreement is that of debtor and creditor and shall not be, or be construed to be a joint venture, equity venture, partnership, or other relationship.

23. Monitoring. To the extent permitted by law, City and its designated employees and agents shall have the right to enter the Property at all reasonable times without a warrant for the purpose of monitoring Program Participant’s compliance with this Agreement. Any such entry shall be made only after reasonable notice to Program Participant, which shall mean at least forty-eight (48) hours in all non-emergency situations. Upon receipt of such notice, Program Participant agrees to consent to entry by City and to cooperate in making the Property available for inspection by City. Program Participant acknowledges and agrees that if for any reason Program Participant fails to consent to such entry or inspection, City may obtain an administrative inspection warrant or take such other legal actions as may be necessary to gain access to and inspect the Property. City shall indemnify and hold harmless Program Participant from any costs, claims, damages or liabilities pertaining to any such entry.

24. Notices. Any notices, requests or approvals given under this Agreement from one party to another may be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, registered or certified mail, return receipt requested to the following address:

To Program Participant: [name of homebuyer]  
[address of homebuyer]  
Moreno Valley, California 92552

To City: City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552  
Attention: City Manager

Either party may change its address for notice by giving written notice thereof to the other party.

25. Attorneys’ Fees and Costs. Should either of the parties to this Agreement incur attorneys’ fees in seeking the enforcement of this Agreement, whether or not a final court judgment is entered, the prevailing party shall be entitled to reimbursement of its reasonable attorneys’ fees and litigation costs, including without limitation expert witness fees, by the other party.

26. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the City and the Program Participant concerning all or any part of the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

**“PROGRAM PARTICIPANT”**

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

Printed Name: \_\_\_\_\_

Dated: \_\_\_\_\_, 201\_

**“CITY”**

**CITY OF MORENO VALLEY**, a municipal corporation

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 201\_

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

[to come]

**EXHIBIT B**  
**HOMEBUYER SENIOR NOTE**  
**(PROMISSORY NOTE SECURED BY DEED OF TRUST)**

[\$[to come: \$245,000 less the sum of the down payment and the original principal amount of the Habitat Homebuyer Note]

Moreno Valley, California

\_\_\_\_\_, 201\_ (“Note Date”)

Property Address: \_\_\_\_\_ Roberts Way  
Moreno Valley, California \_\_\_\_\_

Maturity Date: \_\_\_\_\_ 1, 2060 (“Maturity Date”)

**FOR VALUE RECEIVED**, the undersigned (the “Maker”) promises to pay to the City of Moreno Valley, a municipal corporation (“Holder”) at 14177 Frederick Street, Moreno Valley, California 92552, or at such other address as Holder may direct from time to time in writing, the sum of: (i) [to come: \$245,000 less the sum of the down payment and the original principal amount of the Habitat Homebuyer Note] (the “Note Amount”). All sums hereunder shall be payable in lawful money of the United States of America.

**1. Loan Agreement.** This Promissory Note (this “Note”) is made and delivered pursuant to and in implementation of the Homebuyer Loan Agreement entered by and between the Holder and the Maker dated as of \_\_\_\_\_, 201\_ (“Agreement”), a copy of which is on file as a public record with the Holder. The Agreement is incorporated herein by this reference. The Agreement provides for the sale of the “Property” (as defined in the Agreement) by Holder to Maker. The Maker acknowledges that but for the execution of this Note the Holder would not enter into the Agreement or make the loan contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

**2. Interest Rate.** The Note Amount shall bear interest at the rate of zero percent (0.000%) per annum; provided that this Note is subject to acceleration in connection with any sale of the Property and each and every event of acceleration (as set forth in Section 4 hereof) which occurs.

**3. Time of Payment.** In the event that Maker is in compliance with all of the requirements of the Agreement and the Note Amount has not earlier become due and payable, as provided in Section 4 hereof, the Note Amount, subject to such credits as may become applicable under Section 4 hereof, shall be due and payable on \_\_\_\_\_ 1, 2060 (the “Maturity Date of the Promissory Note”).

**4. Credits.** In the event the Property is occupied in compliance with the Agreement (including all attachments thereto and specifically including Section 6 of this Note) for that period commencing as of the Note Date and ending as of December 31, 2015 (the “Initial Period”), provided that the Property continues to be occupied in compliance with the Agreement, as of each subsequent anniversary of the Initial Period (e.g., December 31, 2016, then each December 31 thereafter until the

Maturity Date of the Promissory Note), Holder shall apply a credit of 1/45th of the original principal amount due under this Note as against the amount due and payable to Holder under this Note; provided that, in no event shall any payment be made by Holder by virtue of this Section 4 of this Note.

**5. Acceleration.** The whole of the Note Amount and all other payments due hereunder and under the Agreement shall, at the election of Holder, become due and be immediately payable to the Holder by the Maker upon the occurrence of any of the following events: (a) the sale or transfer of the Property, including, without limitation, the lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (i) a sale of the Property to a Very Low Income Household at an Affordable Housing Cost with Holder's prior written approval accomplished in conformity with the Agreement, or (ii) the transfer of the Property solely as a result of the marriage, divorce, incompetency or death of one or more individuals constituting the Maker, so long as the transferee(s) give written notice supported by reasonable evidence of such event to Holder within thirty (30) days of its occurrence and the transferee(s) assume the Maker's obligations under the Agreement and this Note, by execution of an assignment and assumption agreement to be provided by the Holder, or (iii) a sale or transfer which under applicable law would not, by itself, permit the Holder to exercise a due on sale or due on encumbrance clause, or (b) the refinancing of any loan senior to the Homebuyer Senior Loan for a loan amount in excess of the sum of the then current loan balance secured by such senior loan and loan closing costs, or (c) such time if or when Maker is no longer an occupant of the Property or is in default of any other obligation under the Agreement.

**6. Sale to Lower Income Household at Affordable Housing Cost.** For a period commencing upon the date of this Note and continuing until the later to occur of: (i) the Maturity Date of this Note, or (ii) the confirmation in writing by the City, signed by the City Manager, that the Homebuyer Senior Loan has been satisfied in full and no moneys remain payable to the City (or other holder) thereunder (the later of such times as so determined by the City constituting the "Extended Expiration Date"), the Note Amount will not become due and payable if Maker sells or otherwise conveys the Property to a Very Low Income Household at an Affordable Housing Cost ("Qualifying Buyer") with Holder's prior written approval, and the purchaser assumes this Note and the Agreement by an assignment and assumption agreement which is reasonably acceptable to the Holder.

"Very Low Income Household" shall mean a person or family of Very Low Income, as defined by California Health and Safety Code Section 50105, that as of the date of this Agreement earns 50% or less of the current annual median income adjusted for family size for the Riverside County area.

"Affordable Housing Cost" means as follows: if Participant is a person or family of Very Low Income earning not more than fifty percent (50%) of San Bernardino County Median Income, "Affordable Housing Cost" shall mean a monthly housing cost which does not exceed thirty percent (30%) times fifty percent (50%) of San Bernardino County median income adjusted for family size appropriate to the Property, as set forth in Health and Safety Code Section 50052.5 and the regulations of the State of California.

"Monthly Housing Cost" means, for a Very Low Income Household purchasing the Property, all of the following associated with the Property, estimated or known as of the date of the proposed sale of the Property: (i) principal and interest payments on a mortgage loan, and any loan insurance

fees associated therewith (provided that if the mortgage loan obtained by the purchaser contains an adjustable interest rate, then for the purposes of this Note the principal and interest payments shall be deemed to be those which would be due upon a mortgage loan amortized over a thirty year period with an interest rate equal to prevailing market rates for thirty-year fixed-rate mortgage loans; provided further that such clause shall not be deemed to permit the use of adjustable interest rate loans with respect to the Property); (ii) property taxes and assessments; (iii) fire and casualty insurance covering replacement value of property improvements; (iv) any homeowner association fees; and (v) a reasonable utility allowance. Monthly housing cost of a purchaser shall be an average of estimated costs for the next twelve (12) month period.

Notwithstanding the provisions of this Section 6, if the Property is sold during the Affordability Period by the Maker to a Very Low Income Household, and the Sales Price does not exceed an “Affordable Housing Cost” to such Buyer, then so long as the Maker is not in default of the Agreement, this Note may be assumed by a buyer determined by City to be qualified (as a Very Low Income Household paying a price which does not exceed Affordable Housing Costs and to otherwise meet the definition of “Eligible Homebuyer” as set forth in the Agreement) by an assignment and assumption agreement which is reasonably acceptable to the Holder. Upon the effective date of such assignment and assumption, the assigning Maker shall no longer be liable for any further obligations under the Agreement or this Note which accrue after the date of such assignment and assumption. In order to verify the buyer’s (“Buyer’s”) status as a Very Low Income Household, Maker shall submit or cause the proposed Buyer to submit to the Holder the identity of the proposed Buyer and adequate information evidencing the income and household size of the proposed Buyer. Said income information shall be submitted together with the notice of proposed sale pursuant to the Agreement not less than thirty (30) days prior to the opening of escrow for the proposed sale and shall include original or true copies of pay stubs, income tax records or other financial documents in order that the Holder may determine and verify the household income of the proposed Buyer to determine whether the Buyer is a Very Low Income Household and whether the Property is being transferred to such Buyer at Affordable Housing Cost. If the Holder is unable to verify the Buyer’s income as provided herein prior to the proposed sale, then the Buyer’s income shall be deemed to exceed the maximum allowable income limit for qualifying buyers.

**7. Security for Note.** This Note shall be secured by a second deed of trust and rider thereto of even date herewith encumbering the Property (“Deed of Trust”), executed by Maker, as trustor, in favor of Holder, as beneficiary.

**8. Prepayment of Note.** Maker may prepay this Note to Holder, provided that any prepayment must be in full and not in part. Prepayment shall not, however, release Maker from the requirements of the Agreement. In addition, prepayment shall be treated in the same manner as a refinancing of the Property.

**9. Non Recourse.** This Note is non recourse.

**10. Holder May Assign.** Holder may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Maker.

**11. Maker Assignment Prohibited.** In no event shall Maker assign or transfer any portion of this Note, the Note Amount and/or the Agreement without the prior express written consent of the Holder, as provided in Section 7 hereof.

**12. Joint and Several.** The undersigned, if more than one person, shall be jointly and severally liable hereunder.

**13. Recovery of Certain Holder Costs.** In the event of refinancing, sale or amendment of this Note, as a condition of Holder considering or processing paperwork, Maker shall pay Holder the amount of Five Hundred Dollars (\$500.00) to assist in defraying Holder's processing costs; provided that such amount shall be without limitation as to recovery of additional actual costs in the event of a sale or transfer.

**14. Attorneys' Fees and Costs.** In the event that any action is instituted to enforce payment under this Note, the parties agree the non-prevailing party shall be responsible for and shall pay to the prevailing party all court costs and all attorneys' fees incurred in enforcing this Note.

**15. Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

**16. Maker's Waivers.** Maker waives any rights to require the Holder to: (a) demand payment of amounts due (known as "presentment"), (b) give notice that amounts due have not been paid (known as "notice of dishonor"), and (c) obtain an official certification of nonpayment (known as "protest").

**17. Notice.** Any notice that must be given to Maker under this Note shall be given by personal delivery or by mailing it by certified mail addressed to Maker at the Property address above or such other address as Maker shall direct from time to time in writing. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment. Any notice to Holder shall be given by certified mail at the address stated above.

**18. Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.



IN WITNESS WHEREOF, Maker has executed this Note as of the date first set forth below.

**MAKER:**

[to come]

By: \_\_\_\_\_  
( )

By: \_\_\_\_\_  
( )

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**EXHIBIT C**  
**HOMEBUYER SENIOR DEED OF TRUST**  
**DEED OF TRUST WITH ASSIGNMENT OF RENTS**

WHEN RECORDED MAIL TO:  
City of Moreno Valley  
Financial & Management Services  
Financial Resources Division  
14177 Frederick Street  
Moreno Valley, California 92552  
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST WITH ASSIGNMENT OF RENTS**  
**(SHORT FORM)**

This DEED OF TRUST, made as of \_\_\_\_\_, 201\_ between [name of homebuyer] ("Program Participant" or "Trustor") whose address is [address of homebuyer], Moreno Valley, California 92552, FIRST AMERICAN TITLE COMPANY OF CALIFORNIA, a California corporation, herein called TRUSTEE, and the CITY OF MORENO VALLEY, a municipal corporation, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Moreno Valley, County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing: (1) payment of the sum of [to come: \$245,000 less the sum of the down payment and the original principal amount of the Habitat Hometown Note] \$\_\_\_\_\_, according to the terms of a promissory note of even date herewith designated as the "Homebuyer Senior Note" made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof pursuant to an unrecorded Homebuyer Loan Agreement between Trustor and Beneficiary as of \_\_\_\_\_, 201\_ (the "Agreement"; a copy of the Agreement is on file with Beneficiary as a public record and is deemed incorporated herein by reference). All capitalized terms not defined

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

herein shall have the meanings established therefor under the Agreement unless the context requires otherwise, (2) the performance of each agreement of Trustor incorporated by reference or contained herein, the default under any of which shall constitute a default hereunder, (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust, (4) compliance under each of (i) that certain Declaration of Conditions, Covenants and Restrictions recorded on August 15, 2014 as Document No. 2014-0310290 among the official land records of the County of Riverside (the "City Developer CC&Rs") and (ii) that certain document entitled Declaration of Conditions, Covenants and Restrictions executed by Trustor and Beneficiary which is recorded of even date herewith (the "City Homebuyer Covenants"), (5) performance under Exhibit "B" which is attached hereto and incorporated herein by reference, and (6) performance under Exhibit "B" which is attached hereto and incorporated herein by reference.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Riverside County on August 18, 1964, commencing at Book 3778, Page 347 of Official Records of the County Recorder for the County of Riverside shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B thereof (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

SEE RIDER TO THIS DEED OF TRUST ATTACHED HERETO  
AS EXHIBIT "B" AND MADE A PART HEREOF.

\_\_\_\_\_  
[name of homebuyer]

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**EXHIBIT A**  
**LEGAL DESCRIPTION**

[to come]

EXHIBIT A TO EXHIBIT C OF ATTACHMENT NO. 6

**EXHIBIT B****RIDER TO DEED OF TRUST**

Exhibit B to Deed of Trust with Assignment of Rents dated as of \_\_\_\_\_, 201\_, executed by [name of homebuyer], a \_\_\_\_\_, as “Trustor”, to First American Title Company of California, a California corporation, as Trustee, for the benefit of the City of Moreno Valley, a municipal corporation, as “Beneficiary” (“Deed of Trust”).

1. **DEFAULT.** A default or breach under any of the following shall, at Beneficiary’s option, constitute a default under this Deed of Trust:

(a) A default under that certain Homebuyer Loan Agreement, executed by Trustor as Program Participant and Beneficiary, as City;

(b) A default under the City Developer Homebuyer Covenants;

(c) A default by Trustor under the City Developer CC&Rs; or

(d) A default under any other deed of trust encumbering the Property which has a priority senior to this Deed of Trust.

2. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deeds of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.

3. **DUE ON SALE OR ENCUMBRANCE.** In the event of any Transfer (as defined below) of the Property, or any portion thereof or interest therein, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term “Transfer” means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Property, granting of an option to purchase any portion of or interest in the Property or any interest therein, or the lease of all or substantially all of the Property or of all or substantially all of the improvements situated on the Property; provided that a sale of the Property to a Very Low Income Household at an Affordable Housing Cost with City’s prior written approval accomplished in strict conformity with Section 4 of the Homebuyer Loan Agreement shall not be deemed to constitute grounds for acceleration under this Deed of Trust. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

4. **PRIORITY OF DEED OF TRUST.** This Deed of Trust shall be subject to the City Developer CC&Rs and the City Homebuyer Covenants but shall be senior to any deed of trust.

## DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof

regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney’s attorneys’ fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.



After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**EXHIBIT D**

**CITY DEVELOPER CC&Rs**

[to come: City Developer CC&Rs as recorded August 15, 2014  
as Document No. 2014-0310290]

**EXHIBIT E**

**NOTICE OF AFFORDABILITY RESTRICTIONS**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN  
TO:

City of Moreno Valley  
Financial & Management Services  
Financial Resources Division  
14177 Frederick Street  
Moreno Valley, California 92552  
Attention: City Manager

[Space above for recorder.]

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

**NOTICE OF AFFORDABILITY RESTRICTIONS ON  
TRANSFER OF PROPERTY**

This **NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY** (or “Notice of Affordability Restrictions”) is dated as of \_\_\_\_\_ \_\_, 201\_ (for identification purposes) and recorded to provide notice substantially as described by Section 33334.3(f)(3)(B) of the California Health and Safety Code as amended by AB 987, Chapter 690, Statutes of 2007 (herein, “Chapter 690”), and affects that certain property described in Exhibit “A” hereto (“Homebuyer Property”). The Moreno Valley Housing Authority, a public body, corporate and politic (“Authority”), the City of Moreno Valley, a municipal corporation (“City”) and Habitat for Humanity, Riverside, Inc., a California nonprofit public benefit corporation (“Developer”) previously entered into an unrecorded Affordable Housing Agreement dated as of May 1, 2013 as

approved by Authority Resolution No. HA 2013-02 and City Council Resolution No. 2013-31 (the “Original AHA”); the Original AHA has been amended and restated by that certain unrecorded Amended and Restated Affordable Housing Agreement as approved by the Authority and the City on September 8, 2015 (the “AHA”). The AHA provided, in part, for the Developer to acquire certain land designated therein as the “Site” (which includes the Homebuyer Property as well as adjacent properties, as more particularly described in the AHA) and for the Developer to divide the Site into eight (8) lots (each a “Lot”), to develop or cause to be developed a detached, single-family dwelling on each (each a “House”), and to sell to “Very Low Income Households” (as defined below) at a cost which does not exceed “Affordable Housing Cost” (as defined below) each Lot with the corresponding House (each such Lot with a House constituting a “Homebuyer Property” or an “Affordable Unit”). \_\_\_\_\_, a [capacity] (the “Participant”), have entered into an unrecorded purchase and sale agreement with Developer dated as of \_\_\_\_\_, 201\_ (the “Purchase and Sale Agreement”) under which Developer agreed to sell and Participant agreed to purchase the Homebuyer Property (as defined herein) subject to covenants which restrict use of the Homebuyer Property as a resource for affordable housing, as more particularly set forth herein. In addition, the Participant entered into an unrecorded agreement entitled “Homebuyer Loan Agreement” with City, dated as of \_\_\_\_\_, 201\_ (the “Homebuyer Loan Agreement”) under which Participant agreed with the City that the Homebuyer Property would be subject to covenants which restrict use of the Homebuyer Property as a resource for affordable housing.

1. Each of the AHA and the Homebuyer Loan Agreement provides for affordability restrictions and restrictions on the transfer of the Property as more particularly set forth in the AHA and the Homebuyer Loan Agreement. A copy of each of the AHA and the Homebuyer Loan Agreement is on file with the Authority as a public record and each is deemed incorporated herein. Reference is made to the AHA and the Homebuyer Loan Agreement with regard to the complete text of the provisions of such agreement which provides for affordability restrictions and restrictions on the transfer of the Property.

2. Each of the AHA and the Homebuyer Loan Agreement restricts ownership and occupancy of the Homebuyer Property to a household of limited income, paying an affordable housing cost; such restrictions are set forth at greater length in documents recorded against the Property, entitled Declaration of Conditions, Covenants and Restrictions recorded among the official records of the County Recorder of the County of Riverside (“Official Records”) as Document

No. 2014-0310290 (the “City Developer CC&Rs”), an instrument entitled “Declaration of Conditions, Covenants and Restrictions” executed by Participant and City (the “City Homebuyer Covenants” or “CC&Rs”) to be recorded among the Official Records of even date herewith, a Homebuyer Senior Deed of Trust substantially in the form prescribed by the Homebuyer Loan Agreement therefor (“Homebuyer Senior Deed of Trust”), a Homebuyer Junior Deed of Trust substantially in the form prescribed by the Homebuyer Loan Agreement therefor (“Homebuyer Junior Deed of Trust”), and a Resale Restriction Agreement (“Resale Restriction Agreement”), substantially in the form as prescribed by the Homebuyer Loan Agreement, each of which is deemed to be incorporated herein by reference.

2.1 Article IV, Section 1 of the CC&Rs provides in part follows:

“.....shall only be owned and occupied by Participant or by households which, as of the time of purchase of the Site, have an income which does not exceed Fifty Percent (50%) of the Riverside County monthly median income (which households shall, for purposes of this Declaration, constitute “Eligible Persons or Families”). It is further agreed and acknowledged that each and every occupant of each of the...[Property] shall execute agreements, promissory notes and deeds of trust encumbering the subject property for the benefit of the City in form acceptable to the City.

(b) The ...[Property] may be sold at an Affordable Housing Cost (as defined below) to Eligible Persons or Families. Affordable Housing Cost shall mean, as to each household consisting of Eligible Persons or an Eligible Program Participant, that purchase price which would result in monthly housing payments which do not exceed an amount under any currently prevailing, fixed conventional home mortgage lending rates applied by any reputable institutional home mortgage lender, or the lending rates of any government-subsidized or special mortgage program for which such person or family qualifies and has obtained a first trust deed loan, which do not exceed: (i) thirty percent (30%) of fifty percent (50%) of the Riverside County monthly median income (as determined by the United States Department of

Housing and Urban Development) (the “Median Income”) for a household having an income which does not exceed fifty percent (50%) of the Median Income, all as more particularly set forth in Sections 50052.5 and 50105 of the California Health and Safety Code.

(c) The covenant contained in this Section ... shall run with the land.

3. During the Affordability Period, the Property, and any interest therein, shall not be conveyed except with the express prior written consent of Grantor, which consent shall be given only if the conveyance is in conformity with the requirements of the AHA, the CC&Rs and the Homebuyer Loan Agreement.

4. The restrictions contained in the CC&Rs expire forty-five (45) years following the date the CC&Rs were recorded against the Property.

5. The commonly known address for the Property is: [to come], Moreno Valley, California 92552.

6. The assessor’s parcel number for the Property is: [to come]; such number is subject to change.

7. The legal description for the Property is attached hereto as Exhibit “A” and is incorporated herein by reference.

8. This Notice of Affordability Restrictions is intended merely to provide notice in the manner generally described under Chapter 690. The HDA, the City Developer CC&Rs, the CC&Rs, the Homebuyer Senior Deed of Trust and the Homebuyer Junior Deed of Trust all remain in full force and effect and are not amended or altered in any manner whatsoever by this Notice of Affordability Restrictions.

9. Capitalized terms shall have the meanings established under the AHA (including all Attachments thereto) and if not provided in the AHA, then under the Homebuyer Loan Agreement excepting only to the extent as otherwise expressly provided under this Notice of Affordability Restrictions.

10. Persons having questions regarding this Notice of Affordability Restrictions, the AHA, the Homebuyer Loan Agreement and any of the attachments thereto (including without limitation the CC&Rs, the Homebuyer Senior Deed of Trust and the Homebuyer Junior Deed of Trust) should contact the

City or Authority at their offices (14177 Frederick Street, Moreno Valley, California 92552, or such other address as may be designated by the City from time to time).

*[Signatures appear on following page.]*

**AUTHORITY:**

**MORENO VALLEY HOUSING  
AUTHORITY**, a public body, corporate  
and politic

By: \_\_\_\_\_  
Executive Director

**CITY:**

**CITY OF MORENO VALLEY**, a  
municipal corporation

\_\_\_\_\_  
Assistant City Manager

**PARTICIPANT:**

[to come]

By: \_\_\_\_\_  
[to come]



**EXHIBIT “A”**  
**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of Riverside, City of Moreno Valley, and described as follows:

[to come]

APN: [to come]

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**EXHIBIT F**

**DISCLOSURE STATEMENT**

I/we [name of homebuyer] (“Participant”) understand, acknowledge and agree that my/our acquisition of that certain real property described in Addendum “A” attached hereto and improvements thereon (collectively, the “Property”) is conditional on a number of factors, including, but not limited to:

- I/we are buying a single-family detached home within the City of Moreno Valley in accordance with the requirements of that certain Amended and Restated Affordable Housing Agreement (the “ARAFA”) entered into by and among the Moreno Valley Housing Authority (the “Housing Authority”), the City of Moreno Valley (the “City”) and Habitat for Humanity, Riverside, Inc. (“Habitat”), an agreement entitled “Homebuyer Loan Agreement” between I/we and the City dated as of \_\_\_\_\_, 201\_, which is on file with the City (the “Homebuyer Loan Agreement”), and a purchase and sale agreement between Habitat and I/we (the “Habitat Agreement”) as amended by a First Amended and Restated Affordable Housing Agreement by and among the Authority, the City and the Developer dated as of September 8, 2015 (herein, the “Agreement”); all capitalized terms in this Disclosure Statement that are not otherwise defined herein have the meanings set forth in the Agreement.
- I/we must qualify as a Very Low Income Household pursuant to Health & Safety Code Section 50105, as determined by the City.
- The City has provided assistance to make the Property available to a Very Low Income Household at Affordable Housing Costs and is relying upon information I/we have made available to the City.

I/We further understand and agree that:

- I/we will be responsible for payment under each of (i) the “Homebuyer Senior Note” (in favor of City as beneficiary, in the original principal amount of [to come: \$245,000 less the amount of down payment/sweat equity and the original principal amount of the Habitat Homebuyer Note] \$ \_\_\_\_\_, and with an original term of 45 years); and (ii) the “Habitat Homebuyer Note” (in favor of Habitat for Humanity Riverside, Inc. as beneficiary, in the original principal amount of [\$: to come]; the Habitat Homebuyer Note has an original term of 45 years. I/we shall be responsible to make regular payments under the Habitat Homebuyer Note. I/we shall also be responsible for payment of closing costs of Five Hundred Dollars (\$500.00) in connection with my/our acquisition of the Property.
- I understand that use of the Property will be limited to use as my/our personal residence for forty-five (45) years (the “Affordable Housing Period”); I further understand that the ability to resell or refinance the Property is severely restricted, and that City approval will be required to assure compliance with recorded restrictions during the Affordable Housing Period; **this restricts the persons to whom we may sell the Property, may result in a sales price which is substantially less than**

*the fair market value of the Property and may preclude refinancing or the sale of the Property in various cases.*

- For a forty-five (45) year period, the Property may only be transferred to Very Low Income Households at an Affordable Housing Cost and the Property must be and remain owner-occupied. In acquisition by the purchaser must be accomplished at a price that does not exceed a back end ratio of 43%, as more particularly set forth in a loan agreement between the City and me/us.
- During the term of our ownership of the Property, I/we intend to continuously occupy the Property and I/we shall not rent or lease the Property.
- City shall not be held responsible for any costs associated with my/our purchase of the Property, including but not limited to any loan fees or charges, any charges for appraisals, or any escrow costs or other costs relating to the transfer of the Property.
- City makes no representation concerning the Property (including without limitation the improvements thereto) or as to the suitability of the Property to Participant. If the Participant can afford to purchase a property which is not subject to price limitations, occupancy limitations or affordability limitations, purchase of the Property is probably is not suitable for purchase by Participant.
- City cannot ensure that information provided by or on my/our behalf will be kept confidential.
- I/We have been advised by City to consult with legal counsel in connection with the ARAFA, the Homebuyer Loan Agreement and the Habitat Agreement.
- City shall not be charged with the knowledge of the contents of the documents of my/our primary lender.

The City financial assistance I receive in connection with the purchase of the Property may be considered to be income for purposes of federal or state income taxes and the City shall not be held responsible for the payment of any taxes which I may incur by virtue of the receipt of such financial assistance.

**PARTICIPANT**

Dated: \_\_\_\_\_, 201\_

By: \_\_\_\_\_  
[name of homebuyer]

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

ADDENDUM “A”

[to come: Description of the Property]

# TRUTH-IN-LENDING REGULATION Z DISCLOSURE STATEMENT

## HOMEBUYER SENIOR LOAN

(Note: it is contemplated that Borrower will also receive a junior loan from Habitat; the terms of such junior loan are not described herein.)

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

<i>Annual Percentage Rate</i>	<i>Finance Charge</i>	<i>Amount Financed</i>	<i>Total of Payments</i>
The cost of your loan as a yearly rate (interest).	The dollar amount the loan will cost you (total accrued interest).	The amount of the City Loan provided to you or on your behalf.	The amount you have paid after you have made all payments provided that credits based upon 1/45 of the original principal amount are attributable each year that the subject property is occupied in compliance with the Homebuyer Loan Agreement.
0% simple interest	\$0	\$ [to come: \$250,000 less the sum of the down payment/sweat equity and the original principal amount of the Habitat Homebuyer Loan]	\$ [to come: \$250,000 less the sum of the down payment/sweat equity and the original principal amount of the Habitat Homebuyer Loan]

**Creditor:** CITY OF MORENO VALLEY  
14177 Frederick Street  
Moreno Valley, California 92552

**Borrower:** [name of homebuyer]  
[address of homebuyer]  
Moreno Valley, California 92552

**Itemization of Amount Financed:** You have the right to receive at this time an itemization of the Amount Financed.

\_\_\_\_\_ I want an itemization.

\_\_\_\_\_ I do not want an itemization.



**Your Payment Schedule Will Be:**

<i>Number of Payments</i>	<i>Amount of Payments</i>	<i>When Payments Are Due</i>
There are no regularly scheduled payments; payment is only due in the event of an Event of Default.	The entire amount will become due upon execution.	There are no regularly scheduled payments; payment is only due in the event of an Event of Default.

**Property:** You must obtain property insurance and name the City of Moreno Valley as a loss payee.

**Security:** You are giving a security interest in the home you are purchasing which is located at \_\_\_\_\_.

**Filing Fees:** \$\_\_\_\_\_ Non-Filing Insurance: \$\_\_\_\_\_

**Late Charge:** N/A

**Prepayment:** If you pay off early, you

\_\_\_\_\_ may \_\_\_\_\_ may not have to pay principal, accrued simple interest and contingent deferred interest.

\_\_\_\_\_ may \_\_\_\_\_ may not have to pay a penalty.

\_\_\_\_\_ may \_\_\_\_\_ may not be entitled to a refund of part of the finance charge.

**Interest Rate:** The Homebuyer Senior Loan has a base interest rate that is

\_\_\_\_\_ fixed at zero percent (0%) per year.

\_\_\_\_\_ variable. Disclosures about the variable-rate feature have been provided to you earlier.

The complete terms of the Homebuyer Senior Loan are fully set forth in the Homebuyer Loan Agreement, the Homebuyer Senior Note, the Homebuyer Senior Deed of Trust and the City Developer CC&Rs. **READ ALL OF THESE DOCUMENTS CAREFULLY. ALL OF THESE DOCUMENTS AFFECT YOUR LEGAL RIGHTS.**

**Assumption:** Someone buying your house

\_\_\_\_\_ may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

\_\_\_\_\_ cannot assume the remainder of the mortgage on the original terms.

**Demand Feature:** This obligation

\_\_\_\_\_ [is payable on demand] or [has a demand feature]

\_\_\_\_\_ [is not payable on demand] or [has no demand feature]

See your loan documents for any additional information about the terms of the Homebuyer Senior Loan (under the Homebuyer Senior Note), nonpayment, default and penalties and any required repayment in full before the scheduled date.

**ITEMIZATION OF THE AMOUNT FINANCED OF \$\_\_\_\_\_**

\$\_\_\_\_\_ Amount given to you directly

\$\_\_\_\_\_ Amount paid on your account

**Amount paid to others on your behalf:**

\$\_\_\_\_\_ to [credit bureau] [appraiser] [title insurance company] [escrow]

\$\_\_\_\_\_ to (name of another creditor)

\$\_\_\_\_\_ to (other)

\$\_\_\_\_\_ prepaid finance charge

## NOTICE OF RIGHT TO CANCEL

### Your Right to Cancel

You are entering into a transaction that will result in a lien on your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of the transaction, which is \_\_\_\_\_; or
- (2) the date you received your Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel the transaction, the lien is also canceled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the lien on your home has been canceled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at any location in the City of Moreno Valley convenient to you. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

### How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at

CITY OF MORENO VALLEY  
14177 Frederick Street  
Moreno Valley, California 92552  
ATTN: City Manager

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of the third business day following the latest of the three events listed above. If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

**ACKNOWLEDGMENT OF RECEIPT**

I have received two (2) copies of this Notice of Right to Cancel.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

**I WISH TO CANCEL**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

**I HAVE NOT CANCELED**

I confirm that at least four days ago (excluding Sundays and federal holidays) I received two (2) copies of this notice, and I have not canceled the transaction for which this notice is given.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

**TRUTH-IN-LENDING  
REGULATION Z DISCLOSURE STATEMENT**

**HABITAT HOMEBUYER LOAN**

(Note: it is contemplated that Borrower will also receive a senior loan from City; the terms of any such junior loan are not described herein.)

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

<i>Annual Percentage Rate</i>	<i>Finance Charge</i>	<i>Amount Financed</i>	<i>Total of Payments</i>
The cost of your loan as a yearly rate (interest).	The dollar amount the loan will cost you (total accrued interest).	The amount of the Habitat Loan provided to you or on your behalf.	The amount you have paid after you have made all payments as scheduled.
0% simple interest	\$0	[to come]	[to come]

**Creditor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Borrower:** [name of homebuyer]  
[address of homebuyer]  
Moreno Valley, California 92552

**Itemization of Amount Financed:** You have the right to receive at this time an itemization of the Amount Financed.

\_\_\_\_\_ I want an itemization.

\_\_\_\_\_ I do not want an itemization.

**Your Payment Schedule Will Be:**

<i>Number of Payments</i>	<i>Amount of Payments</i>	<i>When Payments Are Due</i>
Five hundred forty (540)	[to come]	On the first day of each month after the loan is made, continuing for 30 years.

**Property:** You must obtain property insurance and name Habitat for Humanity, Riverside Inc. as a loss payee.

**Security:** You are giving a security interest in the home you are purchasing which is located at \_\_\_\_\_.

**Filing Fees:** \$\_\_\_\_\_ Non-Filing Insurance: \$\_\_\_\_\_

**Late Charge:** If a payment is late, you will be charged \$\_\_\_/5% of the payment.

**Prepayment:** If you pay off early, you

\_\_\_\_\_ may \_\_\_\_\_ may not have to pay principal, accrued simple interest and contingent deferred interest.

\_\_\_\_\_ may \_\_\_\_\_ may not have to pay a penalty.

\_\_\_\_\_ may \_\_\_\_\_ may not be entitled to a refund of part of the finance charge.

**Interest Rate:** The Homebuyer Junior Loan has a base interest rate that is

\_\_\_\_\_ fixed at zero percent (0%) per year.

\_\_\_\_\_ variable. Disclosures about the variable-rate feature have been provided to you earlier.

The complete terms of the Habitat Junior Loan are fully set forth in the Agreement and the Habitat Homebuyer Note. **READ ALL OF THESE DOCUMENTS CAREFULLY. ALL OF THESE DOCUMENTS AFFECT YOUR LEGAL RIGHTS.**

**Assumption:** Someone buying your house

\_\_\_\_\_ may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

\_\_\_\_\_ cannot assume the remainder of the mortgage on the original terms.

**Demand Feature:** This obligation

\_\_\_\_\_ [is payable on demand] or [has a demand feature]

\_\_\_\_\_ [is not payable on demand] or [has no demand feature]

See your loan documents for any additional information about the terms of the Habitat Homebuyer Loan (under the Habitat Homebuyer Note), nonpayment, default and penalties and any required repayment in full before the scheduled date.



**ITEMIZATION OF THE AMOUNT FINANCED OF \$\_\_\_\_\_**

\$\_\_\_\_\_ Amount given to you directly

\$\_\_\_\_\_ Amount paid on your account

**Amount paid to others on your behalf:**

\$\_\_\_\_\_ to [credit bureau] [appraiser] [title insurance company] [escrow]

\$\_\_\_\_\_ to (name of another creditor)

\$\_\_\_\_\_ to (other)

\$\_\_\_\_\_ prepaid finance charge

## NOTICE OF RIGHT TO CANCEL

### Your Right to Cancel

You are entering into a transaction that will result in a lien on your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of the transaction, which is \_\_\_\_\_; or
- (2) the date you received your Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel the transaction, the lien is also canceled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the lien on your home has been canceled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at any location in the City of Moreno Valley convenient to you. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

### How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

With a copy to:

[Habitat]

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of the third business day following the latest of the three events listed above. If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

**ACKNOWLEDGMENT OF RECEIPT**

I have received two (2) copies of this Notice of Right to Cancel.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

**I WISH TO CANCEL**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

**I HAVE NOT CANCELED**

I confirm that at least four days ago (excluding Sundays and federal holidays) I received two (2) copies of this notice, and I have not canceled the transaction for which this notice is given.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

**EXHIBIT G**  
**HABITAT HOMEBUYER PURCHASE AND SALE AGREEMENT**  
**[TO COME]**

**Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT**

**EXHIBIT H**

**CITY HOMEBUYER COVENANTS**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
TO:

City of Moreno Valley  
Financial & Management Services  
Financial Resources Division  
14177 Frederick Street  
Moreno Valley, CA 92552  
Attention: City Manager

(Space above for Recorder’s use.)  
(Exempt from Recording Fees Per Gov’t Code §27383.)

**THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS** (the “Declaration” or “City Homebuyer Covenants”), dated as of \_\_\_\_\_, 201\_ is made by and between \_\_\_\_\_ (the “Participant”), as owner and Declarant and the **CITY OF MORENO VALLEY**, a municipal corporation (the “City”), as of the date set forth below, and concerns the “Real Property”, which is that certain property described in Exhibit “A” hereto.

**RECITALS**

**A.** City is a municipal corporation. The City is the recipient of moneys from the federal government pursuant to the Neighborhood Stabilization Program (“NSP”) enacted by the United States Congress as part of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, approved July 30, 2008, sometimes referred to as “HERA” and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010), including regulations cited at 75 FR 64322 sometimes together referred to as “NSP3”), and has determined to utilize funding therefrom for the development and long-term retention of affordable ownership housing.

**B.** City entered into an unrecorded Affordable Housing Agreement dated as of May 1, 2013 as approved by the City Council of the City by Resolution No. 2013-31 and approved by the Resolution No. HA 2013-02 of the Moreno Valley Housing Authority (the “Housing Authority”), which Agreement is referred to herein as the “Original AHA”, with Habitat for Humanity, Riverside, Inc., a California nonprofit public benefit corporation (“Developer”); the Original AHA has been

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

amended, restated and superseded by that certain unrecorded agreement entitled “Amended and Restated Affordable Housing Agreement” as approved by the Housing Authority and the City on September 8, 2015 (the “AHA”), pursuant to which the Developer was to purchase that certain parcel of real property (the “Site”) located in the City of Moreno Valley, County of Riverside, State of California, described in Exhibit “A” attached hereto and incorporated herein, and to divide the Site into eight (8) lots (each a “Lot”), to construct or cause to be constructed a house on each lot (each a “House”, and, together with the corresponding Lot, a “Homebuyer Property”), and to effect the conveyance of such residence at “Affordable Housing Cost” to “Program Participants,” as defined in the AHA. The AHA is on file with the City.

**C.** The Site was originally acquired by the former Community Redevelopment Agency of the City of Moreno Valley (the “Redevelopment Agency”). The Redevelopment Agency, as well as all other redevelopment agencies in the State of California, was dissolved pursuant to ABx1 26 as enacted by the California Legislature during 2011 (the “2011 Dissolution Measure”). The administration of the dissolution of redevelopment agencies was also addressed by AB 1484, Chapter 26, Statutes of 2012 (“AB 1484” and, together with the 2011 Dissolution Measure, the “Dissolution Act”). In the course of implementation of the dissolution of the Redevelopment Agency under the Dissolution Act, housing assets of the former Redevelopment Agency were transferred to the Housing Authority.

**D.** In connection with the implementation of the AHA, the Developer, as owner, and City executed an instrument entitled “Declaration of Conditions, Covenants and Restrictions” which was recorded among the official land records of the County Recorder of the County of Riverside (“Official Records”) on May 15, 2014 as Document No. 2014-0310290 (the “Developer CC&Rs”). The Developer CC&Rs apply to the Site, including without limitation the Red Property. A purpose of the Developer CC&Rs is that the Site shall be restricted to use in conformity with the Developer CC&Rs to preserve its value for the benefit of City, Developer, and “Program Participants” (as defined in the AHA) and each successor thereto.

**E.** Participant arranged to acquire the Real Property under an unrecorded agreement entitled “Housing Disposition Agreement” with Developer dated as of \_\_\_\_\_, 201\_\_ (the “HDA”). In addition, Participant has entered into an unrecorded agreement with City entitled “Homebuyer Loan Agreement” dated as of \_\_\_\_\_, 201\_\_ (the “City Loan Agreement”). A copy of the City Loan Agreement is on file with the City. In connection with the HDA and the City Loan Agreement, Participant has agreed, as owner, to execute and cause to be recorded among Official Records this Declaration.

**NOW, THEREFORE,** Participant hereby agrees and covenants to adhere to each and every one of the following covenants, conditions and restrictions with regard to all or any portion of the Real Property and to become and remain responsible for adherence to the covenants, conditions and restrictions contained herein as to the Real Property. Upon each conveyance of a portion of the Real Property, the owner thereof shall be obligated to perform all duties of Participant hereunder, with respect to the Real Property as is owned by such Participant.

**ARTICLE I**  
**NONDISCRIMINATION**

**1.** Participant covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Real Property, nor shall Participant itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Real Property.

Participant, its successors and assigns, shall refrain from restricting the rental, sale or lease of the Real Property on the basis of race, color, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

**b.** In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

**c.** In contracts: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the

subject of this Agreement, nor shall the grantee or any person claiming segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

## ARTICLE II

### MAINTENANCE DUTIES OF PARTICIPANT

**Section 1. Exterior Building Maintenance.** All exterior, painted surfaces of any structures located on the Real Property shall be maintained at all times in a clean and presentable manner. Any such defacing marks shall be cleaned or removed within a reasonable period of time.

**Section 2. Front and Side Exteriors.** Participant shall, at all times maintain the front exterior, any visible side exteriors, and yards, if any, in a clean, safe and presentable manner.

**Section 3. Graffiti Removal.** All graffiti, and defacement of any type, including marks, words and pictures must be removed from the Real Property and any necessary painting or repair completed within one (1) week of creation or within one (1) week after notice to Participant from City, whichever is less.

**Section 4. Landscaping.** All landscaping on the Real Property surrounding the corresponding lot shall be maintained in a manner consistent with standards of the City of Moreno Valley Municipal Code (the “City Code”) and any rules, regulations and standards adopted pursuant to the City Code. In addition, for example, the yard areas shall not contain the following: (a) lawns with grasses in excess of nine (9) inches in height, (b) trees, shrubbery, lawns, and other plant life which are dying from lack of water or other necessary maintenance, (c) trees and shrubbery grown uncontrolled without proper pruning, (d) vegetation so overgrown as to be likely to harbor rats or vermin, (e) dead, decayed or diseased trees, weeds and other vegetation, and (f) inoperative irrigation system(s).

Participant shall properly maintain the buildings, landscaping and yard areas on the Real Property, as follows:

(a) No improperly maintained landscaping shall be visible from public rights of way, including:

1. no lawns with grasses in excess of six (6) inches in height;
2. no untrimmed hedges;
3. no trees, shrubbery, lawns, and other plant life dying from lack of water or other necessary maintenance;
4. no trees and shrubbery grown uncontrolled without proper pruning;
5. no vegetation so overgrown as to be likely to harbor rats or vermin;
6. no dead, decayed or diseased trees, weeds and other vegetation.

(b) No yard areas shall be left unmaintained, including:

EXHIBIT H TO ATTACHMENT NO. 6

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1. no broken or discarded furniture, appliances and other household equipment stored in yard areas for periods exceeding one (1) week;
  2. no packing boxes, lumber, trash, dirt and other debris stored in yards for periods exceeding one (1) week in areas visible from public property or neighboring properties;
  3. no unscreened trash cans, bins or containers stored for unreasonable periods in areas visible from public property or neighboring properties; and
  4. no vehicles parked or stored in other than approved parking areas.
- (c) No buildings may be left in an unmaintained condition, including:
1. no violations of state law, Uniform Codes, or City ordinances;
  2. no condition that constitutes an unsightly appearance that detracts from the aesthetics or property value of the subject property or constitutes a private or public nuisance;
  3. no broken windows or chipped, cracked or peeling paint; and
  4. no conditions constituting hazards and/or inviting trespassers or malicious mischief.

If such buildings, landscaping or yard areas are not so maintained, and such condition is not corrected as soon as possible after notice thereof from City the then City may perform the necessary maintenance and Participant shall pay such costs as are reasonably incurred for such maintenance.

**Section 5. Special Drainage and Water Quality System Maintenance.** In connection with the development of infrastructure as part of the improvements to the Site, a drainage and water quality plan was approved by City. As that part of the drainage and water quality plan which applies to the Real Property, which drainage and water quality plan is referred to herein as the “Home Owner BMP Maintenance Plan” and which is set forth at Exhibit “B” hereto, Participant is required to maintain those drainage and water quality facilities located at the Real Property, consisting of [a retention basin][a swale](the “Drainage and Water Quality Facilities”) located on the Real Property, as more particularly shown at Exhibit “C” hereto (the “BMP Map”). Participant shall not alter the Drainage and Water Quality Facilities without prior City approval, which City may grant, conditionally grant or withhold at its sole and absolute discretion. The Home Owner BMP Maintenance Plan is subject to revision from time to time by City. In the event Participant has any questions relating to the Home Owner BMP Maintenance Plan or its duties thereunder (or by virtue of this Section 5), such Participant should contact the City’s Public Works Department – Land Development Division.

## ARTICLE III

### OBLIGATION TO MAINTAIN, REPAIR AND REBUILD

**Section 1. Maintenance by Participant.** Participant shall, at his sole cost and expense, maintain and repair the Real Property and the improvements thereon keeping the same in good condition and making all repairs as may be required by this Declaration and the City Code.

**Section 2. Damage and Destruction Affecting Real Property - Duty to Rebuild.** If all or any portion of the Real Property and the improvements thereon is damaged or destroyed by fire or other casualty, it shall be the duty of Participant to rebuild, repair or reconstruct the Real Property in a timely manner to restore it to Code compliance condition.

**Section 3. Variance in Exterior Appearance and Design.** If the Site is damaged or destroyed by casualty, Participant may apply to the City for approval to reconstruct, rebuild or repair the Real Property in a manner which will provide different exterior appearance and lot design from that which existed prior to the date of the casualty.

**Section 4. Time Limitation.** In the event of damage or destruction due to casualty, Participant shall be obligated to proceed with all due diligence and commence reconstruction within two (2) months after the damage occurs and complete reconstruction within six (6) months after damage occurs or demolition and vacate within two (2) months, unless prevented by causes beyond the reasonable control of Participant.

## ARTICLE IV

### AFFORDABLE HOUSING

**Section 1. Affordability Covenants.** Participant agrees for itself, and its successors and assigns, and every successor to Participant's interest in the Real Property, or any part thereof that until the forty-fifth (45th) anniversary of the recordation of this Declaration (the "Expiration Date"; the forty-five year period so described is referred to herein as the "Affordability Period"):

(a) Each dwelling unit on the Real Property (the "Affordable Units") shall only be owned and occupied by Participant or by households which, as of the time of purchase of the Real Property, have an income which does not exceed Fifty Percent (50%) of the Riverside County monthly median income (which households shall, for purposes of this Declaration, constitute "Eligible Persons or Families"). It is further agreed and acknowledged that each and every occupant of each of the Affordable Units shall execute agreements, promissory notes and deeds of trust encumbering the subject property for the benefit of the City in form acceptable to the City.

(b) The Affordable Units may be sold at an Affordable Housing Cost (as defined below) to Eligible Persons or Families. Affordable Housing Cost shall mean, as to each household consisting of Eligible Persons or an Eligible Program Participant, that purchase price which would result in monthly housing payments which do not exceed an amount under any currently prevailing, fixed conventional home mortgage lending rates applied by any reputable institutional home mortgage lender, or the lending rates of any government-subsidized or special mortgage program for which such person or family qualifies and has obtained a first trust deed loan, which do not exceed: (i) thirty percent (30%) of fifty percent (50%) of the Riverside County monthly median income (as

determined by the United States Department of Housing and Urban Development) (the “Median Income”) for a household having an income which does not exceed fifty percent (50%) of the Median Income, all as more particularly set forth in Sections 50052.5 and 50105 of the California Health and Safety. In addition, each household acquiring the Property shall be an “Eligible Homebuyer.” For purposes of this paragraph, Eligible Homebuyer means a household that (i) is a Very Low Income Household”, (ii) has satisfactorily completed a Homebuyer Training Program and such completion is certified by each of Developer and by a HUD-certified homebuyer education counselor, which must be evidenced by the delivery of a Homebuyer Training Certificate; (iii) is acquiring a House for owner occupancy by such household at a price which does not exceed Affordable Housing Costs and with a Back End Ratio that does not exceed forty three percent (43%) of such household’s income; and (iv) has executed such instruments as are approved by City acknowledgment that the Property is subject to these City Homebuyer Covenants. For purposes of this paragraph, “Back End Ratio” means the ratio of (i) monthly payments as required on all obligations of a property owner or prospective property owner, including without limitation all housing debt, consumer debt, and any other debt, to (ii) the gross income of the property owner or prospective property owner; for this purpose, gross income of a household shall be determined in accordance with 24 CFR Part 5. Where there is an obligation as to which monthly payments are not expressed as a liquidated amount (but excepting therefrom the “Homebuyer Senior Loan”, as defined in the City Loan Agreement, should such loan remain outstanding), payments are to be imputed based upon the full satisfaction of such obligations over five (5) years (assuming substantially level payments) or less or such other amortization period as may be approved on a case-by-case basis by City.

(c) The covenant contained in this Section 2 shall run with the land and shall automatically terminate and be of no further force or effect as of the Expiration Date as defined at Section 1 of Article IV of this Declaration. Participant acknowledges that this Declaration shall remain in effect over a duration that extends beyond the effectiveness of the Developer CC&Rs.

**Section 2. Owner Occupancy Requirement and Continuing Program Compliance Certification.** Participant shall occupy, establish, and continually use the Real Property as Participant’s principal, permanent residence commencing within thirty (30) days after the recording of this Declaration among Official Records, and Participant shall thereafter continuously occupy the Real Property as Participant’s principal, permanent residence thereafter throughout the Affordability Period. Participant agrees to deliver to City, on February 15, 2016, and on each February 15 thereof during the Affordability Period, and additionally not later than fifteen (15) days after written request therefor from City, written certification, under penalty of perjury, of (i) continuous owner occupancy of the Real Property as Participant’s principal residence, and (ii) compliance with this Declaration and the City Loan Agreement, during the then immediately preceding one year period. The form of such certification shall be in the form of the “Participant Compliance Certificate” (Exhibit “D” hereto).

**Section 3. Transfer of Real Property.** No transfer of the Real Property shall occur until the City determines (a) that the proposed purchaser intends to occupy such Affordable Unit on the Real Property as the proposed purchaser’s principal residence, (b) that the proposed purchaser is an Eligible Person(s) or Household, and (c) that the proposed transfer occurs at an Affordable Housing Cost as determined pursuant to the ARAFA and the City Loan Agreement. The proposed purchaser shall have submitted to the City such information and completed such forms as the City shall request to certify the proposed purchaser’s intent with respect to its residency of the Affordable Unit and its gross income and the proposed purchaser has submitted an affidavit disclosing and

certifying the amount of the proposed purchase price. Prior to conveyance of the Affordable Unit, each approved purchaser shall submit to the City an executed disclosure statement which certifies that the purchaser is aware that the purchaser buying may only sell the unit at an Affordable Housing Cost to a Very Low Income person or family, that the maximum permitted sales price may be less than fair market value and that the corresponding Affordable Unit must be owner-occupied at all times and cannot be rented or leased. Participant shall cooperate with the City in providing such forms to proposed purchasers and in assisting proposed purchasers to prepare such forms and to provide any required information to the City in connection with the Participant’s original sale of the corresponding Affordable Unit.

PARTICIPANT UNDERSTANDS THAT THE DETERMINATION OF THE AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INTEREST RATES, THE TERMS OF SALE OFFERED TO AND THE ECONOMIC CIRCUMSTANCES OF THE PROPOSED PURCHASER AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED, AND THAT THE TRANSFER PRICE PERMITTED HEREUNDER WILL PROBABLY BE SUBSTANTIALLY LESS THAN THE FAIR MARKET VALUE OF SUCH PROPERTY AND MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS RESTRICTION AND, FURTHER, THAT THE RESTRICTIONS MAY SEVERELY LIMIT THE INTEREST OF PROSPECTIVE BUYERS IN THE PROPERTY. PARTICIPANT FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE TRANSFER PRICE THE PRIMARY OBJECTIVE OF EACH OF THE CITY AND THE DEVELOPER AND THIS DECLARATION IS TO PROVIDE HOUSING TO VERY LOW INCOME HOUSEHOLDS AT AN AFFORDABLE HOUSING COST.

The covenant contained in this Section 2 shall run with the land and shall automatically terminate and be of no further force or effect upon the Expiration Date.

**ARTICLE V**

**ENFORCEMENT**

**Section 1. Remedies.** Breach of the covenants contained in this Declaration may be enjoined, abated or remedied by appropriate legal proceeding.

**Section 2. Rights of the City.** As a party to this Declaration, the City is entitled to the following rights:

- a. The City has the right, but not the obligation, to enforce all of the provisions of this Declaration.
- b. Any amendment to the Declaration shall require the written consent of the City.
- c. This Declaration does not in any way infringe on the right or duties of the City to enforce any of the provisions of the City Code including, but not limited to, the abatement of dangerous buildings.

In addition to these rights of the City, each of the Moreno Valley Housing Authority (the “Housing Authority”) and Developer shall have the right to enforce the Declaration; provided that in the event of conflict, City, then Housing Authority, shall control the exercise of remedies over the Developer.

**Section 3. Notice of Inspection.** Participant acknowledges and agrees that the City and its employees and agents and Developer and its employees and agents shall have the right to enter upon the Real Property during normal business hours, and City additionally has the right to enter to ensure compliance with this Declaration and all applicable federal, state and local laws and regulations. The Developer agrees to notify Participant not less than forty-eight (48) hours prior to the Developer’s proposed time of inspection of the Real Property, and agrees to attempt to obtain the Participant’s consent to such inspection. Upon receipt of such notice, Participant agrees to cooperate with the Developer in making the Real Property available for inspection by the Developer. Participant acknowledges and agrees that if for any reason Participant fails to consent to such inspection, the City may (but shall not be obligated to) obtain an administrative inspection warrant or take such other legal actions as may be necessary to gain entry to and inspect the Real Property. This Section 3 shall not limit such other authority City may have to inspect or enter upon the Real Property, including without limitation the Drainage and Water Quality Facilities.

**Section 4. Cumulative Remedies.** The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

**Section 5. Failure to Enforce.** The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

## ARTICLE VI

### GENERAL PROVISIONS

**Section 1. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 2. Construction.** The provisions of this Declaration shall be liberally construed for the purpose of maintaining the Real Property. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

**Section 3. Amendments.** This Declaration may be amended only by the written agreement of Participant and the City.

**Section 4. Notices.** Any notice permitted or required to be delivered as provided herein to Participant shall be in writing and may be delivered either personally or by first-class or certified mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States Mail, postage prepaid, addressed to Participant. Such address may be changed from time to time by notice in writing to the City, which shall be made by certified mail to the City of Moreno Valley at 14177 Frederick Street, Moreno Valley, California 92552, Attention: City Manager, and shall be effective upon receipt.

**Section 5. Term of Declaration.** Except as provided in Article I relating to nondiscrimination, the covenants, conditions and restrictions of this Declaration shall run with the Real Property and shall expire as of the Expiration Date (as defined in Article IV, Section 1 hereof).

IN WITNESS WHEREOF, the City and Participant have caused this instrument to be duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 201\_.

**CITY**

**CITY OF MORENO VALLEY**, a municipal corporation

By: \_\_\_\_\_  
Assistant City Manager

**PARTICIPANT**

\_\_\_\_\_  
  
\_\_\_\_\_

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE REAL PROPERTY**

[to come: description of individual lot being purchased.]

APN:



**EXHIBIT B**  
**HOMEOWNER BMP MAINTENANCE PLAN**

[to come]

**EXHIBIT C**

**BMP MAP**

[to come]

**EXHIBIT D**  
**PARTICIPANT COMPLIANCE CERTIFICATE**  
**NEIGHBORHOOD STABILIZATION PROGRAM**  
**ANNUAL CERTIFICATION OF CONTINUED OCCUPANCY**  
**AND PROGRAM COMPLIANCE**

Property Address: Compliance Year:  
Moreno Valley, California ("Property")

The undersigned is/are Homebuyers in City's Neighborhood Stabilization Program ("Program"). Pursuant to the Program, I/we acquired the Property with the assistance of a homebuyer mortgage loan from City ("Homebuyer Loan") I/we acknowledge and agree that pursuant to the Homebuyer Loan documents, I/we am/are required to occupy the Property continuously as my/our principal residence and to comply with Program requirements, as provided in the Homebuyer Loan Agreement and Homebuyer Loan documents.

I/we hereby certify, under penalty of perjury, that I/we have continuously occupied the Property as my/our principal residence during the last one-year period and that I/we presently occupy the Property as my/our principal residence. Further, I/we hereby certify, under penalty of perjury, that I/we have complied with the Program requirements set forth in the Homebuyer Loan Agreement and the Homebuyer Loan documents during the last one-year period.

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

By: \_\_\_\_\_  
Printed Name:

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

By: \_\_\_\_\_  
Printed Name:

PLEASE RETURN FULLY EXECUTED DOCUMENT WITH A CURRENT UTILITY BILL TO:

City of Moreno Valley  
City Hall  
14177 Frederick Street  
P.O. Box 88005  
Moreno Valley, California 92552-0805  
Attn: Financial Resources Division

**EXHIBIT I**  
**HABITAT HOMEBUYER NOTE**  
**(PROMISSORY NOTE SECURED BY DEED OF TRUST)**

[\$to come] (“Original Principal Amount”) Moreno Valley, California

\_\_\_\_\_, 201\_ (“Habitat Loan Date”)

Property Address: [address of homebuyer]

Moreno Valley, California 92552  
City State Zip Code

**FOR VALUE RECEIVED**, the undersigned (“Maker”) promises to pay to the Habitat for Humanity, Riverside, Inc. (“Holder”) at \_\_\_\_\_ or at such other address as Holder may direct from time to time in writing, the sums specified in the terms and provisions of this Promissory Note as the “Note Amount”.

**1. Loan Agreement.** This Habitat Homebuyer Promissory Note (this “Note”) is made and delivered pursuant to and in implementation of the Housing Disposition Agreement entered by and among the Holder and the Maker dated \_\_\_\_\_, 201\_ (“Agreement”), a copy of which shall, upon delivery to the City, be maintained on file with the City as a public record. The Maker acknowledges that but for the execution of this Note, the Holder would not enter into the Agreement or make the loan contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

**2. Term.** The term of the Note shall be forty-five (45) years from the Habitat Loan Date (“Term”). This Note will mature on \_\_\_\_\_, 20\_\_ (the “Maturity Date”).

**3. Note Amount.** The sums due and payable pursuant to the terms and provisions of this Note consist of both the Original Principal Amount and any other amounts which become due hereunder (collectively, the “Junior Note Amount”).

**4. Junior Loan Amount; Interest Rate.** The Junior Loan Amount shall accrue no (0%) interest.

**5. Junior Loan Amount; Payments.** Payments shall be due and payable on the first day of each month beginning \_\_\_\_\_ 1, 201\_. Monthly payments shall be due in the amount of [to come] Dollars (\$[to come]). Payments shall be made payable to the Holder and shall be made at the address set forth in the first paragraph of this Note.

**6. Acceleration.** The whole of the Note Amount, inclusive of both the Original Principal Amount and all other payments due hereunder and under the Agreement shall become due and be immediately payable to the Holder by the Maker upon the occurrence of the first of the following events: (a) the sale or transfer of the Property, including, without limitation, the lease,

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (i) a sale of the Property to a Very Low Income Household at an Affordable Housing Cost with City's prior written approval accomplished in strict conformity with Section 4 of that certain Homebuyer Loan Agreement by and between the City of Moreno Valley ("City") and Maker dated as of \_\_\_\_\_, 201\_, a copy of which is on file with the City as a public record (the "Homebuyer Loan Agreement"), or (ii) the transfer of the Property solely as a result of the marriage, divorce, incompetence or death of one or more individuals constituting the Maker, so long as the transferee(s) give written notice supported by reasonable evidence of such event to each of City and Holder within thirty (30) days of its occurrence and the transferee(s) assume the Maker's obligations under the Agreement and this Note, by execution of an assignment and assumption agreement to be provided by the City, or (iii) a sale or transfer which under applicable law would not, by itself, permit the Holder to exercise a due on sale or due on encumbrance clause, or (b) such time if or when Maker is no longer an occupant of the Property pursuant to Section 5 of the Agreement or is in default of any other obligation under the Agreement.

**7. Nonrecourse.** This Note shall be a nonrecourse obligation.

**8. Security for Note.** This Note shall be secured by a subordinate deed of trust and rider thereto of even date herewith encumbering the Property ("the Habitat Homebuyer Deed of Trust"), executed by Maker, as trustor, in favor of Holder, as beneficiary. The Habitat Homebuyer Deed of Trust shall be junior and subordinate to a deed of trust securing repayment to the City of the "Homebuyer Senior Loan" (the "Homebuyer Senior Loan") as provided under the Homebuyer Loan Agreement.

**9. Prepayment of Note.** Maker may prepay this Note to Holder, in full or in part; provided that Maker and Holder acknowledge that City has a priority right to payments under the promissory note evidencing the Homebuyer Senior Loan (as payable to City). Prepayment shall not, however, release Maker from the requirements of Homebuyer Senior Loan, the City Developer CC&Rs, the City Homebuyer CC&Rs or any remaining requirements under the Habitat Homebuyer Loan. In addition, prepayment shall be treated in the same manner as a refinancing of the Property.

**10. Holder May Assign.** Holder may, upon first obtaining the written consent of City (which City may grant, deny, conditionally grant or withhold at its discretion), assign its right to receive payment under this Note without necessity of obtaining the consent of the Maker.

**11. Maker Assignment Prohibited.** In no event shall Maker assign or transfer any portion of this Note, the Note Junior Amount and/or the Agreement without the prior express written consent of each of the Holder and the City.

**12. Joint and Several.** The undersigned, if more than one, shall be jointly and severally liable hereunder.

**13. Attorneys' Fees and Costs.** In the event that any action is instituted to enforce payment under this Homebuyer Junior Note, the parties agree the non-prevailing party shall be responsible for and shall pay to the prevailing party all court costs and all attorneys' fees incurred in enforcing this Note.

**14. Amendments.** This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

**15. Maker's Waivers.** Maker waives any rights to require the Holder to: (a) demand payment of amounts due (known as "presentment"), (b) give notice that amounts due have not been paid (known as "notice of dishonor"), and (c) obtain an official certification of nonpayment (known as "protest").

**16. Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Note shall be in writing and shall be either personally served, sent by telecopy, mailed in the United States mails, certified, return receipt requested, postage prepaid, or sent by other commercially acceptable means, addressed to the party to be served with the copies indicated below, at the last address given by that party to the other under the provisions of this section. All communications shall be deemed delivered at the earlier of actual receipt, the next business day after deposit with Federal Express or other overnight delivery service or two (2) business days following mailing as aforesaid, or if telecopied, when sent, provided a copy is mailed or delivered as provided herein:

**To Maker:**

[name of homebuyer]  
[address of homebuyer] Roberts Way  
Moreno Valley, California 92553

**To Holder:**

Habitat for Humanity, Riverside, Inc.  
2180 Iowa Avenue  
Riverside, CA 92507  
Attn: Executive Director

**17. Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

**IN WITNESS WHEREOF,** Maker has executed this Note as of the date set forth below.

**MAKER:**

By: \_\_\_\_\_  
Printed Name: [name of homebuyer]

**EXHIBIT J**  
**HABITAT HOMEBUYER DEED OF TRUST**  
**DEED OF TRUST WITH ASSIGNMENT OF RENTS**

WHEN RECORDED MAIL TO:

Habitat for Humanity, Riverside,  
Inc.  
2180 Iowa Avenue  
Riverside, CA 92507  
Attn: Executive Director

APN:

Address:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST WITH ASSIGNMENT OF RENTS**  
**(SHORT FORM)**

This DEED OF TRUST, made as of \_\_\_\_\_, 201\_ between [name of homebuyer] ("Program Participant" or "Trustor") whose address is [address of homebuyer], Moreno Valley, California 92552, **FIRST AMERICAN TITLE COMPANY OF CALIFORNIA**, a California corporation, herein called TRUSTEE, and **HABITAT FOR HUMANITY, RIVERSIDE, INC.**, a California nonprofit public benefit corporation, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Moreno Valley, County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing: (1) payment of the sum of [to come] Dollars (\$\_\_\_\_\_), according to the terms of a promissory note of even date herewith designated as the "Habitat Homebuyer Note" made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof pursuant to a [Homebuyer Loan Agreement] between Trustor and Beneficiary as of \_\_\_\_\_, 201\_ (the "Agreement"; a copy of the Agreement is on file with Beneficiary as a public record and is deemed incorporated herein by reference). All capitalized terms not defined herein shall have the meanings established therefor under the Agreement unless the context requires otherwise, (2) the performance

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of each agreement of Trustor incorporated by reference or contained herein, the default under any of which shall constitute a default hereunder, (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust, and (4) compliance under each of (i) that certain Declaration of Conditions, Covenants and Restrictions recorded on \_\_\_\_\_, 201\_ as Document No. \_\_\_\_\_ among the official land records of the County of Riverside (the "City Developer CC& Rs") and (ii) that certain document entitled Declaration of Conditions, Covenants and Restrictions (the "City Homebuyer Covenants") recorded of even date herewith, and (5) performance under Exhibit "B" which is attached hereto and incorporated herein by reference.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Riverside County August 18, 1964 commencing at Book 3778, Page 347 of the Official Records of the Riverside County Recorder shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B thereof (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

SEE RIDER TO THIS DEED OF TRUST ATTACHED HERETO  
AS EXHIBIT "B" AND MADE A PART HEREOF.

\_\_\_\_\_  
[name of homebuyer]



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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**EXHIBIT A**  
**LEGAL DESCRIPTION**

[to come]

**EXHIBIT B****RIDER TO DEED OF TRUST**

Exhibit B to Deed of Trust with Assignment of Rents dated as of \_\_\_\_\_, 201\_, executed by \_\_\_\_\_ [name of homebuyer], an individual, as “Trustor”, to First American Title Company of California, a California corporation, as Trustee, for the benefit of Habitat for Humanity, Riverside, Inc., as “Beneficiary” (“Deed of Trust”).

1. **DEFAULT.** A default or breach under any of the following shall, at Beneficiary’s option, constitute a default under this Deed of Trust:

- (a) A default under the City Developer CC&Rs; or
- (b) A default under the Homebuyer Senior Deed of Trust; or
- (c) A default under any other deed of trust encumbering the Property which has a priority senior to this Deed of Trust.

2. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deeds of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.

3. **DUE ON SALE OR ENCUMBRANCE.** In the event of any Transfer (as defined below) of the Property, or any portion thereof or interest therein, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term “Transfer” means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Property, granting of an option to purchase any portion of or interest in the Property or any interest therein, or the lease of all or substantially all of the Property or of all or substantially all of the improvements situated on the Property; provided that a sale of the Property to a Very Low Income Household at an Affordable Housing Cost with City’s prior written approval accomplished in strict conformity with Section 4 of the Homebuyer Loan Agreement shall not be deemed to constitute grounds for acceleration under this Deed of Trust. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

4. **PRIORITY OF DEED OF TRUST.** This Deed of Trust shall be subject and subordinate to the City Developer CC&Rs and the Homebuyer Senior Deed of Trust.

**DO NOT RECORD**

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof

regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney’s attorneys’ fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**DO NOT RECORD**

**REQUEST FOR FULL RECONVEYANCE  
TO FIRST AMERICAN TITLE COMPANY OF CALIFORNIA, TRUSTEE**

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,  
Note and Reconveyance to

\_\_\_\_\_

*Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.*

**DEED OF TRUST  
with power of sale**

\_\_\_\_\_  
**TRUSTEE**

**EXHIBIT K  
SELLER DEED**

Recording Requested by:  
  
When Recorded Return to and  
Mail Tax Statements to:

APN: \_\_\_\_\_ Address: \_\_\_\_\_ (Space above for Recorder's Use.)

**GRANT DEED**

For a valuable consideration, receipt of which is hereby acknowledged,

**HABITAT FOR HUMANITY, RIVERSIDE, INC.**, a California nonprofit public benefit corporation ("Grantor"), hereby grants to [to come][capacity], herein called ("Grantee"), the real property hereinafter referred to as the "Property," described in Exhibit A attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants or record described there.

1. The Property is conveyed in accordance with and subject to certain Amended and Restated Affordable Housing Agreement entered into by and among the City of Moreno Valley, a municipal corporation ("City"), the Moreno Valley Housing Authority ("Authority") and Grantor dated as of May 1, 2013 as amended and restated as of September 8, 2015 and approved on September 8, 2015 by each of the Authority and the City (the "AHA"), a copy of which is on file with the City at its offices as a public record and which is incorporated herein by reference. The Property is also conveyed in accordance with a Homebuyer Loan Agreement between the City and the Grantee dated as of \_\_\_\_\_, 201\_ (the "HLA"), a copy of which is on file with the City. All capitalized terms not defined herein shall have the meanings capitalized therefor in the AHA and, if not defined therein, as defined in the HLA.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall not use the Property for other than the uses allowed pursuant to the AHA and the HLA.



3. The Property is conveyed to grantee at a purchase price, herein called “Purchase Price”, determined in accordance with the uses permitted. Therefore, Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that the Grantee, such successors and such assigns, shall maintain and use the Property in accordance with that certain Declaration of Conditions, Covenants and Restrictions recorded as document number 2014-0310290 (the “City Developer CC&Rs”) among the official land records of the County Recorder of the County of Riverside (“Official Records”) that certain document entitled Declaration of Conditions, Covenants and Restrictions executed by Grantee and City (the “City Homebuyer Covenants”) recorded of even date herewith.

THIS PROPERTY IS SUBJECT TO DECLARATIONS OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR AFFORDABLE HOUSING WHICH PROHIBIT THE RENTAL OF THE PROPERTY AND WHICH RESTRICT THE OCCUPANCY AND TRANSFER OF THE PROPERTY.

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

5. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by the Agreement; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner’s title was acquired by foreclosure, deed in lieu of foreclosure, trustee’s sale or otherwise.

6. All covenants contained in this Grant Deed shall be covenants running with the land. Grantee’s obligation to maintain and use the improvements constructed as provided in paragraph 3 shall continue in effect for a period ending on [insert date which is the 45<sup>th</sup> anniversary of the conveyance of the Site by the Authority to the Developer]. Every covenant contained in this Grant Deed against discrimination contained in paragraph 4 of this Grant Deed shall remain in perpetuity. The covenants shall be enforceable by each of the City and the Authority.

7. All covenants without regard to technical classification or designation shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. The City, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 201\_.

The Grantee agrees to be bound by the covenants set forth above.

**“GRANTOR”**

**HABITAT FOR HUMANITY, RIVERSIDE, INC.,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Kathy Michalak  
Its: Executive Director

By: \_\_\_\_\_  
Nicholas Adcock  
Its: Treasurer

**“GRANTEE”**

\_\_\_\_\_  
[Name of Grantee(s)]

[to come]

**EXHIBIT A**  
**LEGAL DESCRIPTION**

[to come]

**EXHIBIT L****HOME OWNER BMP MAINTENANCE PLAN**

Maintenance requirements of the pervious pavers located in the homeowners driveway shall be as follows:

On an ongoing basis the surrounding landscape areas shall be maintained. Grass and landscape clippings shall be disposed of immediately.

Three days after each storm event the pervious paver area shall be inspected for ponding. If storm water remains remove and replace 3/8" pea gravel in paver joints. If ponding persists consult a licensed civil engineer for mitigation options.

Once each month the surface shall be swept with all debris and dust collected for disposal. Once each April, July, and November the joints in the pervious pavers shall be vacuumed or swept to reduce chance of clogging.

Once every ten years the 3/8" pea gravel in the paver joints shall be removed and replaced.

Maintenance requirements of the river rock landscape feature located adjacent to the homeowner's driveway shall be as follows:

On an ongoing basis the surrounding landscape areas shall be maintained. Grass and landscape clippings shall be disposed of immediately. All trash and debris shall be removed as needed.

Three days after each storm event the area are shall be inspected for ponding. If storm water remains remove and replace the non-woven filter fabric. If ponding persists consult a licensed civil engineer for mitigation options.

Once each April, July, and November the area shall be leaf blown or swept to reduce chance of clogging.

Once every ten years the non-woven filter fabric shall be removed and replaced.

**ATTACHMENT NO. 7**  
**CITY DEVELOPER CC&Rs**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Moreno Valley  
Financial & Management Services  
Financial Resources Division  
14177 Frederick Street  
Moreno Valley, CA 92552  
Attention: City Manager

(Space above for Recorder's use.)  
(Exempt from Recording Fees Per Gov't Code  
§27383.)

**THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS** (the "Declaration" or "City Developer CC&Rs"), dated as of \_\_\_\_\_, 201\_ is made by and among **HABITAT FOR HUMANITY, RIVERSIDE, INC.**, a California nonprofit public benefit corporation (the "Participant" or the "Developer") and the **CITY OF MORENO VALLEY**, a municipal corporation (the "City"), as of the date set forth below, and concerns the "Site", which is that certain property described in Exhibit "A" hereto.

**RECITALS**

**A.** City is a municipal corporation. The City is the recipient of moneys from the federal government pursuant to the Neighborhood Stabilization Program ("NSP") enacted by the United States Congress as part of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, approved July 30, 2008, sometimes referred to as "HERA" and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010), including regulations cited at 75 FR 64322 sometimes together referred to as "NSP3"), and has determined to utilize funding therefrom for the development and long-term retention of affordable ownership housing.

**B.** City entered into an Affordable Housing Agreement dated as of May 1, 2013 as approved by the City Council of the City by Resolution No. 2013-31 and approved by the Resolution

No. HA 2013-02 of the Moreno Valley Housing Authority (the “Housing Authority”), which Agreement is referred to herein as the “Original AHA”, with Habitat for Humanity, Riverside, Inc., a California nonprofit public benefit corporation (“Developer”); the Original AHA has been amended, restated and superseded that agreement entitled “Amended and Restated Affordable Housing Agreement” as approved by the Housing Authority and the City on September 8, 2015 (the “AHA”), pursuant to which the Developer was to purchase that certain parcel of real property (the “Site”) located in the City of Moreno Valley, County of Riverside, State of California, described in Exhibit “A” attached hereto and incorporated herein, and to divide the Site into eight (8) lots (each a “Lot”), to construct or cause to be constructed a house on each lot (each a “House”, and, together with the corresponding Lot, a “Homebuyer Property”), and to effect the conveyance of such residence at “Affordable Housing Cost” to “Program Participants,” as defined in the Agreement.

**C.** The Site was originally acquired by the former Community Redevelopment Agency of the City of Moreno Valley (the “Redevelopment Agency”). The Redevelopment Agency, as well as all other redevelopment agencies in the State of California, was dissolved pursuant to ABx1 26 as enacted by the California Legislature during 2011 (the “2011 Dissolution Measure”). The administration of the dissolution of redevelopment agencies was also addressed by AB 1484, Chapter 26, Statutes of 2012 (“AB 1484” and, together with the 2011 Dissolution Measure, the “Dissolution Act”). In the course of implementation of the dissolution of the Redevelopment Agency under the Dissolution Act, housing assets of the former Redevelopment Agency were transferred to the Housing Authority.

**D.** Developer, Housing Authority and the City desire and intend that the Site shall be restricted to use in conformity with this Declaration to preserve its value for the benefit of City, Developer, “Participants” (which shall mean each “Program Participant”, as defined in the Agreement, and each successor thereto (“Participants”)) as to any portion of the Site), and their successors, and the surrounding neighborhood.

**E.** “Participant” shall mean (i) the Developer and (ii) each subsequent owner as to the Site that is owned by such person(s). Upon conveyance of the Site by the Developer accomplished in strict conformance with Article IV of the CC&Rs, as confirmed by the City, Developer shall not thereafter be deemed to be a “Participant” hereunder until such time, if ever, that the Developer later acquires title to the Site.

**NOW, THEREFORE,** Developer hereby agrees and covenants to adhere to each and every one of the following covenants, conditions and restrictions with regard to all or any portion of the Property owned by Developer (or its successors and assigns) as though Developer were a Participant, and, as a condition of closing escrow on the House, to require the Participant purchasing such House to acknowledge and agree to a similar declaration of covenants, conditions and restrictions, and to become and remain responsible for adherence to the covenants, conditions and restrictions contained herein as to such House. Upon each conveyance of a portion of the Site, the owner thereof shall be obligated to perform all duties of Participant hereunder, with respect to the Site as is owned by such Participant.

**ARTICLE I**

**NONDISCRIMINATION**

**1.** Participant covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall Participant itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site.

Participant, its successors and assigns, shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

**b.** In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

**c.** In contracts: “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming segregation with reference to

the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

**ARTICLE II**

**DUTIES OF PARTICIPANT**

**Section 1. Exterior Maintenance.** All exterior, painted surfaces of any structures located on the Site shall be maintained at all times in a clean and presentable manner. Any such defacing marks shall be cleaned or removed within a reasonable period of time.

**Section 2. Front and Side Exteriors.** Participant shall, at all times maintain the front exterior, any visible side exteriors, and yards, if any, in a clean, safe and presentable manner.

**Section 3. Graffiti Removal.** All graffiti, and defacement of any type, including marks, words and pictures must be removed from the Site and any necessary painting or repair completed within one (1) week of creation or within one (1) week after notice to Participant from City, whichever is less.

**Section 4. Landscaping.** All landscaping surrounding the corresponding lot shall be maintained in a manner consistent with standards of the City of Moreno Valley Municipal Code (the “City Code”) and any rules, regulations and standards adopted pursuant to the City Code. In addition, for example, the yard areas shall not contain the following: (a) lawns with grasses in excess of nine (9) inches in height, (b) trees, shrubbery, lawns, and other plant life which are dying from lack of water or other necessary maintenance, (c) trees and shrubbery grown uncontrolled without proper pruning, (d) vegetation so overgrown as to be likely to harbor rats or vermin, (e) dead, decayed or diseased trees, weeds and other vegetation, and (f) inoperative irrigation system(s).

Participant shall properly maintain the buildings, landscaping and yard areas on the Site, as follows:

- (a) No improperly maintained landscaping shall be visible from public rights of way, including:
  - 1. no lawns with grasses in excess of six (6) inches in height;
  - 2. no untrimmed hedges;
  - 3. no trees, shrubbery, lawns, and other plant life dying from lack of water or other necessary maintenance;
  - 4. no trees and shrubbery grown uncontrolled without proper pruning;
  - 5. no vegetation so overgrown as to be likely to harbor rats or vermin;
  - 6. no dead, decayed or diseased trees, weeds and other vegetation.
- (b) No yard areas shall be left unmaintained, including:



- 1. no broken or discarded furniture, appliances and other household equipment stored in yard areas for periods exceeding one (1) week;
  - 2. no packing boxes, lumber, trash, dirt and other debris stored in yards for periods exceeding one (1) week in areas visible from public property or neighboring properties;
  - 3. no unscreened trash cans, bins or containers stored for unreasonable periods in areas visible from public property or neighboring properties; and
  - 4. no vehicles parked or stored in other than approved parking areas.
- (c) No buildings may be left in an unmaintained condition, including:
- 1. no violations of state law, Uniform Codes, or City ordinances;
  - 2. no condition that constitutes an unsightly appearance that detracts from the aesthetics or property value of the subject property or constitutes a private or public nuisance;
  - 3. no broken windows or chipped, cracked or peeling paint; and
  - 4. no conditions constituting hazards and/or inviting trespassers or malicious mischief.

If such buildings, landscaping or yard areas are not so maintained, and such condition is not corrected as soon as possible after notice thereof from City or the City of Moreno Valley, then either City or the City may perform the necessary maintenance and Covenantor shall pay such costs as are reasonably incurred for such maintenance.

**ARTICLE III**

**OBLIGATION TO MAINTAIN, REPAIR AND REBUILD**

**Section 1. Maintenance by Participant.** Participant shall, at his sole cost and expense, maintain and repair the Site and the improvements thereon keeping the same in good condition and making all repairs as may be required by this Declaration and the City Code.

**Section 2. Damage and Destruction Affecting Site - Duty to Rebuild.** If all or any portion of the Site and the improvements thereon is damaged or destroyed by fire or other casualty, it shall be the duty of Participant to rebuild, repair or reconstruct the Site in a timely manner to restore it to Code compliance condition.

**Section 3. Variance in Exterior Appearance and Design.** If the Site is damaged or destroyed by casualty, Participant may apply to the City for approval to reconstruct, rebuild or repair the Site in a manner which will provide different exterior appearance and lot design from that which existed prior to the date of the casualty.

**Section 4. Time Limitation.** In the event of damage or destruction due to casualty, Participant shall be obligated to proceed with all due diligence and commence reconstruction within two (2) months after the damage occurs and complete reconstruction within six (6) months after

damage occurs or demolition and vacate within two (2) months, unless prevented by causes beyond the reasonable control of Participant.

## ARTICLE IV

### AFFORDABLE HOUSING

**Section 1. Affordability Covenants.** Participant agrees for itself, and its successors and assigns, and every successor to Participant's interest in the Site, or any part thereof that until the forty-fifth (45th) anniversary of the recordation of this Declaration (the "Expiration Date"):

(a) Each dwelling unit on the Site (the "Affordable Units") shall only be owned and occupied by Participant or by households which, as of the time of purchase of the Site, have an income which does not exceed Fifty Percent (50%) of the Riverside County monthly median income (which households shall, for purposes of this Declaration, constitute "Eligible Persons or Families"). It is further agreed and acknowledged that each and every occupant of each of the Affordable Units shall execute agreements, promissory notes and deeds of trust encumbering the subject property for the benefit of the City in form acceptable to the City.

(b) The Affordable Units may be sold at an Affordable Housing Cost (as defined below) to Eligible Persons or Families. Affordable Housing Cost shall mean, as to each household consisting of Eligible Persons or an Eligible Program Participant, that purchase price which would result in monthly housing payments which do not exceed an amount under any currently prevailing, fixed conventional home mortgage lending rates applied by any reputable institutional home mortgage lender, or the lending rates of any government-subsidized or special mortgage program for which such person or family qualifies and has obtained a first trust deed loan, which do not exceed: (i) thirty percent (30%) of fifty percent (50%) of the Riverside County monthly median income (as determined by the United States Department of Housing and Urban Development) (the "Median Income") for a household having an income which does not exceed fifty percent (50%) of the Median Income, all as more particularly set forth in Sections 50052.5 and 50105 of the California Health and Safety.

(c) The covenant contained in this Section 2 shall run with the land and shall automatically terminate and be of no further force or effect as of the Expiration Date.

**Section 2. Transfer of Site.** No transfer of the Affordable Unit shall occur until the City determines (a) that the proposed purchaser intends to occupy such Affordable Unit as the proposed purchaser's principal residence, (b) that the proposed purchaser is an Eligible Person(s) or Household, and (c) that the proposed transfer occurs at an Affordable Housing Cost as determined pursuant to the Agreement. The proposed purchaser shall have submitted to the City such information and completed such forms as the City shall request to certify the proposed purchaser's intent with respect to its residency of the Affordable Unit and its gross income and the proposed purchaser has submitted an affidavit disclosing and certifying the amount of the proposed purchase price. Prior to conveyance of the Affordable Unit, each approved purchaser shall submit to the City an executed disclosure statement which certifies that the purchaser is aware that the purchaser buying may only sell the unit at an Affordable Housing Cost to a Very Low Income person or family, that the maximum permitted sales price may be less than fair market value and that the corresponding Affordable Unit must be owner-occupied at all times and cannot be rented or leased. Participant shall cooperate with the City in providing such forms to proposed purchasers and in assisting

proposed purchasers to prepare such forms and to provide any required information to the City in connection with the Participant's original sale of the corresponding Affordable Unit.

PARTICIPANT UNDERSTANDS THAT THE DETERMINATION OF THE AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INTEREST RATES, THE TERMS OF SALE OFFERED TO AND THE ECONOMIC CIRCUMSTANCES OF THE PROPOSED PURCHASER AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED, AND THAT THE TRANSFER PRICE PERMITTED HEREUNDER WILL PROBABLY BE SUBSTANTIALLY LESS THAN THE FAIR MARKET VALUE OF SUCH PROPERTY AND MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS RESTRICTION AND, FURTHER, THAT THE RESTRICTIONS MAY SEVERELY LIMIT THE INTEREST OF PROSPECTIVE BUYERS IN THE PROPERTY. PARTICIPANT FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE TRANSFER PRICE THE PRIMARY OBJECTIVE OF EACH OF THE CITY AND THE DEVELOPER AND THIS DECLARATION IS TO PROVIDE HOUSING TO VERY LOW INCOME HOUSEHOLDS AT AN AFFORDABLE HOUSING COST.

The covenant contained in this Section 2 shall run with the land and shall automatically terminate and be of no further force or effect upon the Expiration Date.

## ARTICLE V

### ENFORCEMENT

**Section 1. Remedies.** Breach of the covenants contained in this Declaration may be enjoined, abated or remedied by appropriate legal proceeding.

**Section 2. Rights of the City.** As a party to this Declaration, the City is entitled to the following rights:

- a. The City has the right, but not the obligation, to enforce all of the provisions of this Declaration.
- b. Any amendment to the Declaration shall require the written consent of the City.
- c. This Declaration does not in any way infringe on the right or duties of the City to enforce any of the provisions of the City Code including, but not limited to, the abatement of dangerous buildings.

In addition to these rights of the City, each of the Moreno Valley Housing Authority (the "Housing Authority") and Developer shall have the right to enforce the Declaration; provided that in the event of conflict, City, then Housing Authority, shall control the exercise of remedies over the Developer.

**Section 3. Notice of Inspection.** Participant acknowledges and agrees that the City and its employees and agents and Developer and its employees and agents shall have the right to enter upon the Site during normal business hours, and City additionally has the right to enter to ensure

compliance with this Declaration and all applicable federal, state and local laws and regulations. The Developer agrees to notify Participant not less than forty-eight (48) hours prior to the Developer's proposed time of inspection of the Site, and agrees to attempt to obtain the Participant's consent to such inspection. Upon receipt of such notice, Participant agrees to cooperate with the Developer in making the Site available for inspection by the Developer. Participant acknowledges and agrees that if for any reason Participant fails to consent to such inspection, the City may (but shall not be obligated to) obtain an administrative inspection warrant or take such other legal actions as may be necessary to gain entry to and inspect the Site.

**Section 4. Cumulative Remedies.** The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

**Section 5. Failure to Enforce.** The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

## ARTICLE VI GENERAL PROVISIONS

**Section 1. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 2. Construction.** The provisions of this Declaration shall be liberally construed for the purpose of maintaining the Site. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

**Section 3. Amendments.** This Declaration may be amended only by the written agreement of Participant and the City.

**Section 4. Notices.** Any notice permitted or required to be delivered as provided herein to Participant shall be in writing and may be delivered either personally or by first-class or certified mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States Mail, postage prepaid, addressed to Participant. Such address may be changed from time to time by notice in writing to the City, which shall be made by certified mail to the City of Moreno Valley at 14177 Frederick Street, Moreno Valley, California 92552, Attention: City Manager, and shall be effective upon receipt.

**Section 5. Term of Declaration.** Except as provided in Article I relating to nondiscrimination, the covenants, conditions and restrictions of this Declaration shall run with the Site and shall expire as of the forty-fifth (45th) anniversary of the date of recordation of this Declaration.

IN WITNESS WHEREOF, the City and Participant have caused this instrument to be duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 201\_.

**CITY**

**CITY OF MORENO VALLEY**, a municipal corporation

By: \_\_\_\_\_  
Assistant City Manager

**DEVELOPER**

**HABITAT FOR HUMANITY, RIVERSIDE, INC.**,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Printed Name: Kathy Michalak  
Its: Executive Director

By: \_\_\_\_\_  
Printed Name: Nicholas Adcock  
Its: Treasurer

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE SITE**

THE EAST HALF OF LOT 106 AND ALL OF LOT 107 OF EDGEMONT GARDENS TRACT, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 15, PAGE 90 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN(s): 481-250-002 and 481-250-003

**ATTACHMENT NO. 8**

**REQUEST FOR NOTICE OF DEFAULT**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Moreno Valley  
Financial & Management Services  
Financial Resources Division  
14177 Frederick Street  
Moreno Valley, California 92552  
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Exempt from recording fees pursuant to Government  
Code § 27383.

**Request for Notice Under Section 2924b Civil Code**

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 201\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_, Official Records of Riverside County, California, and describing land therein as

See Exhibit A attached hereto

executed by \_\_\_\_\_, as Trustor, in which \_\_\_\_\_ is named as Beneficiary, and \_\_\_\_\_ as Trustee, be mailed to CITY OF MORENO VALLEY, Financial & Management Services, Financial Resources Division, 14177 Frederick Street, Moreno Valley, California 92552, Attention: City Manager.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A REQUEST MUST BE RECORDED.

EXHIBIT A TO ATTACHMENT NO. 8

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**EXHIBIT A**  
**LEGAL DESCRIPTION**

[to come.]



**ATTACHMENT NO. 9**

**SCOPE OF DEVELOPMENT**

**I. GENERAL DESCRIPTION**

The Site is specifically delineated on the Map and the Legal Description of the Site.

**II. DEVELOPMENT**

The Developer shall construct or cause to be constructed not fewer than eight (8) detached, single-family house on the Site, each with not less than 3 bedrooms and 2 bathrooms, together with all on-site and off-site features described in this Scope of Development, including without limitation landscaping. All such improvements collectively constitute the “Improvements”. The Improvements are to be accomplished in one phase consisting of the development of eight (8) Houses and any off sites or conditions of City approvals for the Site.

The quality of construction shall be of a high level. The Improvements shall conform to the approved plans on file with the City as of the Date of Agreement as supplemented by the Design Development Drawings (the “Approved Plans”), including all conditions and mitigation measures. No House shall have air conditioning as of the time it is sold to a Program Participant. This Agreement shall not prevent an owner of House from making improvements to a House at a time after the House has been conveyed to such owner; the City shall have no responsibilities regarding any such future improvements.

The Developer shall commence and complete the Improvements by the respective times established therefor in the Schedule of Performance.

**III. DEVELOPMENT STANDARDS**

The Improvements shall conform to all applicable state laws and regulations and to local zoning, applicable provisions of the Municipal Code of the City of Moreno Valley (the “Municipal Code”) and the following development standards:

**A. General Requirements:**

1. **Vehicular Access.** The placement of vehicular driveways shall be coordinated with the needs of proper street traffic flow as approved by the City. In the interest of minimizing traffic congestion, the City will control the number and location of curb breaks for access to the Site for off-street parking and truck loading. All access driveways shall require written approval of the City staff.

2. **Building Signs.** Signs shall be limited in size, subdued and otherwise designed to contribute positively to the environment. Signs identifying the building use will be permitted, but their height, size, location, color, lighting and design will be subject to City staff approval, and signs must conform to the Municipal Code.

3. **Screening.** All outdoor storage of materials or equipment shall be enclosed or screened to the extent and in the manner required by the City staff.

4. Landscaping. The Developer shall provide and maintain landscaping within the public rights-of-way and within setback area along all street frontages and conforming to the plans as hereafter approved by the City.

Landscaping shall consist of trees, shrubs and installation of an automatic irrigation system adequate to maintain such plant material. The type and size of trees to be planted, together with a landscaping plan, shall be subject to the City staff approval prior to planting.

5. Utilities. All utilities on the Site provided to service the units rehabilitated or reconstructed by the Developer shall be underground at Developer's expense.

6. Building Design. Buildings shall be constructed such that the Improvements shall be of high architectural quality, and shall be effectively and aesthetically designed and in conformance with City approvals.

#### **B. Design Features:**

The following design features are considered essential components to the Improvements:

Handicapped Units - Units are to be fully handicapped accessible in compliance with State Housing Code - Title 24 requirements.

Security - The details of security will be reviewed upon submission of the detailed plans.

Overall Design Quality, Materials, Colors, Design Features - Quality of design is important, materials and colors are to be approved by City.

Garages - Garage facilities (and not merely carports) shall be made available for each dwelling unit on Site.

#### **C. City Processing:**

Upon conclusion of the City's design and review processes as generally referenced at Sections 4.2 and 4.3 of this Agreement, construction of the Improvements in conformity with such approvals shall be deemed to conform to this Article III of this Scope of Development.

#### **D. Drainage and Water Quality**

In connection with the development of infrastructure as part of the Improvements, a drainage and water quality plan has been approved by City. The drainage and water quality plan, a copy of which is attached as Exhibit "A" hereto and is entitled "Habitat for Humanity BMP Maintenance Plan", includes certain requirements imposed on Developer. Two of the eight lots comprising the Site (12914 Roberts Way and 12923 Roberts Way) have water quality bio-retention basins ("Retention Basins"), with such lots being referred to, for convenience, as the "Retention Basin Lots". The six remaining lots (referred to for convenience as the "Swale Lots") have swales (the "Swales"). The Retention Basins and the Swales are collectively referred to herein as the "Drainage and Water Quality System." The Retention Basins and Swales, respectively, are more particularly described in the "Best Practice Management (BMP) Plan Map" attached as Exhibit "C" hereto.

Developer shall be responsible for maintaining the Site, including without limitation the Drainage and Water Quality System, in accordance with the Habitat for Humanity BMP Maintenance Plan. Upon conveyance of each House to a homebuyer, each such homebuyer shall thereafter be responsible for the maintenance of such House and surrounding land as conveyed to such owner, including without limitation that portion of the Drainage and Water Quality System situated on such owner's property (the "Owner Drainage and Water Quality System Portion"), with such Owner Drainage and Water Quality System Portion to be maintained in accordance with the "Home Owner BMP Maintenance Plan" as set forth as Exhibit "B" hereto. Developer may enter into an agreement under which each owner of any lot shall maintain the Drainage and Water Quality System as situated on such owner's property; provided that each of Developer and each such owner shall be responsible to City and shall have duty to City to maintain the Drainage and Water Quality System on the Site throughout the Affordability Period. In the event the Developer has or an owner has any questions regarding the Drainage and Water Quality System or the obligations of the Developer and/or such owner in connection therewith, they should contact the City Public Works Department – Land Development Division.

#### **IV. DEMOLITION AND SOILS**

The Developer assumes all responsibility for surface and subsurface conditions at the Site, and the suitability of the Site for the Improvements. The Developer has undertaken all investigation of the Site as it shall deem necessary and has not received or relied upon any representations of the City, the City, or their respective officers, agents and employees.

**EXHIBIT A****HABITAT FOR HUMANITY BMP MAINTENANCE PLAN**

On an ongoing basis the surrounding landscape areas shall be maintained. Grass and landscape clippings shall be disposed of immediately. All trash and debris shall be removed as needed. Any damaged grass and/or plants shall be replaced. Replace surface mulch layer as needed to maintain a 2-3 inch soil cover.

Three days after each storm event the area are shall be inspected for ponding. If storm water remains inspect and clean storm drainage system inlets and outlets. If ponding persists consult a licensed civil engineer for mitigation options.

On an annual basis inspect and clean storm drainage system inlets and outlets.

**EXHIBIT B****HOME OWNER BMP MAINTENANCE PLAN**

Maintenance requirements of the pervious pavers located in the homeowners driveway shall be as follows:

On an ongoing basis the surrounding landscape areas shall be maintained. Grass and landscape clippings shall be disposed of immediately.

Three days after each storm event the pervious paver area shall be inspected for ponding. If storm water remains remove and replace 3/8" pea gravel in paver joints. If ponding persists consult a licensed civil engineer for mitigation options.

Once each month the surface shall be swept with all debris and dust collected for disposal.

Once each April, July, and November the joints in the pervious pavers shall be vacuumed or swept to reduce chance of clogging.

Once every ten years the 3/8" pea gravel in the paver joints shall be removed and replaced.

Maintenance requirements of the river rock landscape feature located adjacent to the homeowner's driveway shall be as follows:

On an ongoing basis the surrounding landscape areas shall be maintained. Grass and landscape clippings shall be disposed of immediately. All trash and debris shall be removed as needed.

Three days after each storm event the area are shall be inspected for ponding. If storm water remains remove and replace the non-woven filter fabric. If ponding persists consult a licensed civil engineer for mitigation options.

Once each April, July, and November the area shall be leaf blown or swept to reduce chance of clogging.

Once every ten years the non-woven filter fabric shall be removed and replaced.

**EXHIBIT C**  
**BEST PRACTICE MANAGEMENT (BMP) PLAN MAP**

[to come]

ATTACHMENT NO. 10

CERTIFICATE OF COMPLETION OF CONSTRUCTION

RECORDING REQUESTED BY  
AND WHEN RECORDED  
MAIL TO:

HABITAT FOR HUMANITY,  
RIVERSIDE, INC.  
2180 Iowa Avenue  
Riverside CA 92507  
Attn: Executive Director

(Space Above for Recorder's Use Only)

CERTIFICATE OF COMPLETION OF CONSTRUCTION

THIS CERTIFICATE OF COMPLETION OF CONSTRUCTION (the "Certificate") is made by the MORENO VALLEY HOUSING AUTHORITY, a public body, corporate and politic (the "City"), in favor of HABITAT FOR HUMANITY, RIVERSIDE, INC., a California nonprofit public benefit corporation (the "Developer"), as of the date set forth below.

RECITALS

**A.** City, the Moreno Valley Housing Authority (the "Housing Authority") and the Developer have entered into that certain Affordable Housing Agreement ("Original AHA") dated May 1, 2013 as approved by City Council Resolution No. 2013-31 and Housing Authority Resolution No. HA 2013-02, which has been amended, restated and superseded by the amended and Restated Affordable Housing Agreement dated as of September 8, 2015 by and among the City, the Housing Authority and Developer (the "Agreement") concerning the redevelopment of certain real property situated in the City of Moreno Valley, California, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Property").

**B.** As referenced in Section 4.13 of the Agreement, City is required to furnish the Developer or its successors with a Certificate of Completion of Construction upon completion of construction of the "Improvements" (as defined in Section 1.1 of the Agreement), which Certificate

is required to be in such form as to permit it to be recorded in the Recorder’s Office of Riverside County. This Certificate is conclusive determination of satisfactory completion of the construction and development required by the Agreement.

C. City has conclusively determined that the construction of the Improvements has been satisfactorily completed.

NOW, THEREFORE, City hereby certifies as follows:

1. City does hereby certify that the construction of [the Improvements has been fully and satisfactorily completed in full conformance with the Agreement][those of the Improvements required to be made to that portion of the Property described hereunder as the “Site”, which Site constitutes a portion of the Property, have been completed].

2. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance construction work on the Site, or any part thereof.

3. This Certificate shall not constitute evidence of Developer’s compliance with those covenants in the Agreement that survive the issuance of this Certificate or Developer’s compliance to construct Improvements other than those situated on the Site.

4. This Certificate is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Nothing contained in this instrument shall modify in any other way any other provisions of the Agreement or documents recorded in connection therewith concerning the use of the Site.

IN WITNESS WHEREOF, City has executed this Certificate of Completion this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

**CITY OF MORENO VALLEY**, a municipal corporation

By: \_\_\_\_\_  
Thomas DeSantis  
Its: Assistant City Manager

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT



**EXHIBIT A**  
**LEGAL DESCRIPTIONS**

Legal description of the Property:

THE EAST HALF OF LOT 106 AND ALL OF LOT 107 OF EDGEMONT GARDENS TRACT, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 15, PAGE 90 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN(s): 481-250-002 and 481-250-003

Legal description of the Site:

[to come]

[APN: to come]

**ATTACHMENT NO. 11****CALCULATION OF AFFORDABLE HOUSING COST**

“Affordable Housing Cost” for the purposes of the Agreement is that purchase price which would result in a monthly housing cost which does not exceed the product of thirty percent (30%) times fifty percent (50%) of Riverside County median income adjusted for family size appropriate for the House.

The following is a worksheet of how to calculate Affordable Housing Cost.

For a three bedroom House, the maximum allowable monthly housing costs for Very Low Income Household purchasers may not exceed 1/12 of 30% x 50% of Riverside County Median Income for a family of 4 (which median income constitutes \$65,000 as of the First Amendment Date), or \$812.50; provided that, the determination of the City shall control.

Monthly Housing Costs include:

- a. Mortgage Principal and Interest
- b. Private Mortgage Insurance
- c. Property Taxes
- d. Fire/Casualty Insurance
- e. Property Maintenance
- f. Utilities Allowance
- g. Homeowner’s Association Fees (if any)

**ATTACHMENT NO. 12  
DEVELOPER SALE CERTIFICATE**

(Developer Letterhead)

City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552  
Attn: City Manager

This constitutes a Developer Sale Certificate under that certain Amended and Restated Affordable Housing Agreement (“ARAFA”), dated as of August 1, 2015, by and among the City of Moreno Valley (“City”), the Moreno Valley Housing Authority (“Housing Authority”) and Habitat for Humanity, Riverside, Inc., a California nonprofit public benefit corporation (“Developer”). All capitalized terms not defined herein shall have the respective meanings established therefor in the ARAFA. Developer acknowledges that each of City and Housing Authority will rely upon this Developer Sale Certificate.

Developer is proposing to sell that property located at \_\_\_\_\_ (address), Moreno Valley, California, to \_\_\_\_\_ (“Homebuyer”) for a sale price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) consisting of: \_\_\_\_\_ [list components of purchase price, including down payment and promissory note payable by Homebuyer to Developer]. With respect to this proposed sale (“Proposed Sale”), Developer represents, warrants and certifies to each of City and Housing Authority as follows:

1. The Homebuyer is an Eligible Homebuyer;
2. The Homebuyer has satisfactorily completed a Homeowner Training Program and has obtained a Homebuyer Training Certificate submitted herewith as Exhibit “A”. The Homebuyer Training Certificate remains in effect as of the date of this Developer Sale Certificate;
3. The Homebuyer has executed or is prepared to execute all instruments required to be executed by Homebuyer under the ARAFA, and a purchase and sale agreement with Developer;
4. The purchase price complies with the ARAFA and does not exceed Current Market Appraised Value;
5. The House and the lot upon which it is situated (the “Lot”, and, together with the House, the “Property”) has been completed in compliance with the Plans and the ARAFA;
6. Developer has provided to Homebuyer a copy of each of (i) the Home Owner BMP Maintenance Plan and (ii) the page of the Best Management Practice Plan (BMP) Exhibit A that corresponds to the address for the House. Developer has disclosed to Homebuyer that Homebuyer will be responsible to maintain the Property. [For all Houses other than those located at \_\_\_\_\_ and \_\_\_\_\_: Developer has additionally disclosed to Homebuyer that Homebuyer will be responsible to

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

maintain the drainage swale located on the Lot][For those Houses located at 12914 Roberts Way and 12923 Roberts Way: Developer has additionally disclosed to Homebuyer that Homebuyer will be responsible to maintain the water quality bio-retention basin located on the Lot].

- 7. The Homebuyer has satisfied the Habitat Work Qualifications.
- 8. Developer has met with Homebuyer and Developer has discussed with Homebuyer the provisions of the City Developer CC&Rs and the City Homebuyer Covenants.
- 9. Developer has not received and shall not receive any remuneration from the Homebuyer excepting as has been disclosed in writing by Developer to City.
- 10. Developer has not committed any Default under the ARAFA, nor is Developer aware of any facts or circumstances the continuation of which would constitute an event of Default under the ARAFA.
- 11. Developer is not aware of any mechanics' liens, liens of materialmen, claims, lawsuits or losses concerning the Property.

**HABITAT FOR HUMANITY, RIVERSIDE, INC.,**  
 A California public benefit corporation

By: \_\_\_\_\_  
           Kathy Michalak  
 Its:     Executive Director  
 Dated: \_\_\_\_\_

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**EXHIBIT "A"**  
**HOME BUYER TRAINING CERTIFICATE**

[to be attached]

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**HOUSING DISPOSITION AGREEMENT**

**BY AND BETWEEN**

**HABITAT FOR HUMANITY, RIVERSIDE, INC.,**

**DEVELOPER**

**AND**

**[homebuyer A and homebuyer B]**

**PARTICIPANT**

([address: to come])

(Very Low Income)

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- Attachment No. 6 – Junior Lien Truth-In-Lending Disclosure Statement

**Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT**



## HOUSING DISPOSITION AGREEMENT

This **HOUSING DISPOSITION AGREEMENT** (the “Agreement”), dated as of \_\_\_\_\_, 201\_ is entered into by and between Habitat for Humanity, Riverside, Inc., a California nonprofit public benefit corporation (the “Developer” or “Habitat”) and [**homebuyer A and homebuyer B**], husband and wife (collectively, the “Participant”). Developer and Participant hereby agree as follows:

### 100. SUBJECT OF AGREEMENT

#### 101. Purpose of Agreement; Definitions.

**101.1 Purpose.** The purpose of this Agreement is to provide for the sale of certain property by Developer to a Very Low Income Household at Affordable Housing Cost (as those capitalized terms are defined below), to provide for long-term affordability of the subject property and to provide for certain payments to be made to Developer as set forth in greater detail herein. Under this Agreement, the subject property may only be marketed and sold (or otherwise transferred in whole or in part) with the prior written approval of Developer to other qualified Very Low Income Households at an Affordable Housing Cost for a forty-five (45) year period. In accordance with the terms of this Agreement, Participant desires to purchase that certain real property commonly known as [address: to come], Moreno Valley, California [zip code] (the “Real Property”), and more particularly described in the “Legal Description of the Real Property,” as defined below.

Prior to entering into this Agreement, Participant has satisfied the Habitat Work Qualifications and has been cleared by each of Developer, the City and the Authority as a Qualifying Buyer.

**101.2 Definitions.** Any terms not defined expressly below shall have the meanings established therefor in the Amended and Restated City Habitat Agreement.

(a) **“Acknowledgment of Covenants”** means an instrument in the form of Attachment No. 4 hereto.

(b) **“Affordability Period”** means the period commencing as of the date of the conveyance of the Real Property by Developer to Participant and ending as of the forty-fifth (45th) anniversary thereof.

(c) **“Affordable Housing Cost”** means: as Participant is a person or family of Very Low Income earning not more than fifty percent (50%) of Riverside County Median Income, “Affordable Housing Cost” means a monthly housing cost which does not exceed thirty percent (30%) times fifty percent (50%) of Riverside County median income adjusted for family size appropriate to the Real Property, as set forth in Health and Safety Code Section 50052.5 and the regulations of the State of California.

(d) **“Agreement”** means this Housing Disposition Agreement by and between Developer and Participant.

(e) **“Amended and Restated City Habitat Agreement”** means that certain instrument entitled “Amended and Restated Affordable Housing Agreement” by and among the City,

(Very Low Income)

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

the Authority, and Habitat. A copy of the Amended and Restated City Habitat Agreement is on file with the City as a public record and has been provided to Participant by Developer a reasonable time before Participant has entered into this Agreement.

(f) **“Authority”** means the Moreno Valley Housing Authority and any governmental successor to its rights, powers and responsibilities.

(g) **“City”** means the City of Moreno Valley, a municipal corporation.

(h) **“City Code”** means the Moreno Valley Municipal Code as amended from time to time.

(i) **“City Homebuyer Covenants”** means an instrument prepared by the City substantially in the form of Exhibit H to the Homebuyer Loan Agreement.

(j) **“City Manager”** means the City Manager of the City or his or her designee.

(k) **“Conditions Precedent”** means those conditions set forth in Section 209 of this Agreement that must be satisfied prior to the Conveyance.

(l) **“Conveyance”** means the conveyance of the Real Property (including the Improvements) by Developer to Participant in accordance with the terms and conditions of this Agreement by the Grant Deed Containing Restrictions.

(m) **“Date of Agreement”** means [\_\_\_\_\_, 201\_].

(n) **“Disclosure Statement”** means Attachment No. 5 to this Agreement.

(o) **“Escrow”** means the escrow opened pursuant to Section 202 of this Agreement.

(p) **“Events of Acceleration”** means those events defined in Section 201 of this Agreement.

(q) **“Executive Director”** means the Executive Director of the Authority or his or her designee.

(r) **“First Deed of Trust”** or **“Homebuyer Senior Deed of Trust”** means a deed of trust as provided under Exhibit C to the Homebuyer Loan.

(s) **“First Loan”** means the loan by the City to Participant as provided under the First Loan Note.

(t) **“First Loan Documentation”** means the First Loan Note, the Homebuyer Senior Deed of Trust and all matters referenced therein.

(u) **“First Loan Note”** or **“Homebuyer Senior Note”** means that promissory note by Participant as maker as given to City as holder as delivered under Exhibit B to the Homebuyer Loan Agreement.

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(v) **“First Loan Note Amount”** means the sum of \_\_\_\_\_ (\$\_\_\_\_\_).

(w) **“Grant Deed Containing Resale Restrictions”** means Attachment No. 3 as attached to this Agreement.

(x) **“Habitat Executive Director”** means the Executive Director of Developer.

(y) **“Habitat Homebuyer (Junior) Note Amount”** means the principal amount of \_\_\_\_\_ (\$\_\_\_\_\_).

(z) **“Habitat Homebuyer Loan Truth-In-Lending Disclosure Statement”** means a truth-in-lending disclosure substantially in the form of Attachment No. 8 as attached to this Agreement.

(aa) **“Habitat Homebuyer Note”** or **“Habitat Homebuyer (Junior) Note”** means a promissory note in the form of Attachment No. 6 hereto.

(bb) **“Habitat Second Loan”** means a loan by Developer to Participant as more particularly described in the Habitat Homebuyer (Junior) Note.

(cc) **“Habitat Second Trust Deed”** means a deed of trust in the form of Attachment No. 7 hereto.

(dd) **“Habitat Work Qualifications”** means that Participant has worked at the direction of Developer on an uncompensated, volunteer basis for not less than [five hundred (500) hours in the case of a household affiliated by marriage or civil union][two hundred fifty (250) hours in the case of each single (head of household) person] constructing homes for occupancy of households other than Participant.

(ee) **“Homebuyer Loan Agreement”** means an agreement substantially in the form of Attachment No. 5 to the Amended and Restated City Habitat Agreement including such edits as may be approved by the City.

(ff) **“Improvements”** means those improvements located on the Real Property as of the date of the Conveyance, including without limitation a single family residence.

(gg) **“Legal Description of the Real Property”** means Attachment No. 1 as attached to this Agreement.

(hh) **“Maturity Date”** means the thirtieth (30<sup>th</sup>) anniversary of the Conveyance.

(ii) **“Maturity Date of the First Loan Note”** means the date established under the First Loan Documentation for the maturity of the First Loan.

(jj) **“Monthly Housing Cost”** means, for a Very Low Income Household purchasing the Real Property, all of the following associated with the Real Property, estimated or known as of the date of the proposed sale of the Real Property: (i) principal and interest payments on

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a mortgage loan, and any loan insurance fees associated therewith (provided that if the mortgage loan obtained by the purchaser contains an adjustable interest rate, then for the purposes of this Restriction the principal and interest payments shall be deemed to be those which would be due upon a mortgage loan amortized over a thirty year period with an interest rate equal to prevailing market rates for thirty-year fixed-rate mortgage loans; provided further that such clause shall not be deemed to permit the use of adjustable interest rate loans with respect to the Real Property); (ii) property taxes and assessments; (iii) fire and casualty insurance covering replacement value of property improvements; (iv) any homeowner association fees; and (v) a reasonable utility allowance. Monthly housing cost of a purchaser shall be an average of estimated costs for the next twelve (12) month period.

(kk) **“Notice of Affordability Restriction”** has the meaning established therefor in the Amended and Restated Habitat Authority Affordable Housing Agreement.

(ll) **“Official Records”** means, unless the context otherwise requires, the official land records of the County Recorder of the County of Riverside.

(mm) **“Participant”** means the person or persons set forth in the first paragraph of this Agreement, and their successors and assigns.

(nn) **“Qualifying Buyer”** means a Very Low Income Household.

(oo) **“Real Property”** means that property is more fully described in the Legal Description of the Real Property.

(pp) **“Sales Price”** means the amount of One Hundred Eighty Six Thousand Six Hundred Ninety Dollars (\$\_\_\_\_\_00), which amount is inclusive of the Sweat Equity Amount.

(qq) **“Schedule of Performance”** means Attachment No. 2 as attached to this Agreement and incorporated herein by reference.

(rr) **“Sweat Equity Amount”** means Thirty Thousand Dollars (\$30,000.00).

(ss) **“Truth-In-Lending Disclosure”** means a truth-in-lending disclosure with respect to the Habitat Second Loan substantially in the form of Attachment No. 8 as attached to this Agreement.

(tt) **“Very Low Income Household”** shall mean a person or family of Very Low or Low Income, as these terms are defined by California Health and Safety Code Section 50105, that as of the date of this Agreement earns 50% or less of the current annual median income adjusted for family size for the Riverside County (“County”) area.

**102. Ownership of the Real Property.** The Authority owns the Real Property, subject to covenants recorded pursuant to the Amended and Restated City Habitat Agreement, as of the execution of this Agreement by Developer.

**103. Developer.** Developer is a California nonprofit public benefit corporation. The principal office of Developer is located at 2180 Iowa Avenue, Riverside, California 92507. Unless otherwise required by law, the Habitat Executive Director may act on behalf of Developer hereunder.

**104. Participant.** Participant consists of [homebuyer A (“Homebuyer A”) and homebuyer B (“Homebuyer B”)], husband and wife, collectively. Prior to the conveyance of the Real Property to Participant, the principal office and mailing address of Participant for purposes of this Agreement shall be deemed to be [old Participant address], \_\_\_\_\_ Valley, CA [zip code]; after the conveyance of the Real Property to Participant, the principal address of Participant for purposes of this Agreement shall be [address: to come], Moreno Valley, California [zip code]. Notice to either Homebuyer A or Homebuyer B shall be deemed to constitute notice to both and to Participant. Each of Homebuyer A and Homebuyer B shall be jointly and severally liable for all liabilities, duties and responsibilities of Participant under this Agreement (including without limitation the attachments hereto).

**105. Prohibition Against Change in Participant.** The qualifications and identity of Participant are of particular interest to Developer. It is because of these qualifications and identity that Developer has entered into this Agreement with Participant. Consequently, no person, whether a voluntary or involuntary successor of Participant shall acquire any rights or powers under this Agreement nor shall Participant assign all or any part of this Agreement without the prior written approval of each of the City, the Authority and Developer; the consent by the City and Authority may be granted, conditionally granted, withheld or refused at the sole and absolute discretion of the City and the Authority, respectively.

**106. Representations by Participant.** Participant represents and warrants to Developer as follows:

- (a) Participant is a Qualifying Buyer;
- (b) Participant has submitted an application and additional information verifying income eligibility to each of the City, the Authority and Developer prior to execution of this Agreement. Participant represents, warrants, and declares under penalty of perjury to each of the City, the Authority and Developer that all information Participant has provided and will provide in the future to Developer is and will be true, correct and complete. Participant acknowledges that each of the City, the Authority, and Developer is relying upon Participant’s representations as to income, household size, assets and other information to determine whether Participant is a Very Low Income Household, and Developer would not have entered into this Agreement and Authority and City would not enter into the Homebuyer Loan Agreement and City would not make the First Loan if Participant did not so qualify;
- (c) Participant intends to reside in the Real Property as Participant’s principal residence immediately upon acquisition of the Real Property and at all times during the period of Participant’s ownership of the Real Property;
- (d) Participant has had the opportunity to obtain advice concerning this Agreement from advisors of Participant’s choosing, and Participant has carefully reviewed the provisions of this Agreement, including without limitation: (i) long-term restrictions upon the use and resale of the Real Property; (ii) truth-in-lending disclosures substantially in the form of Attachment No. 5 to this Agreement; and (iii) maturity of the Habitat Homebuyer Loan as of the Maturity Date of the Habitat Homebuyer Loan (namely, \_\_\_\_\_, [2060 or, if later, that year which occurs 45 years after conveyance to homebuyer]); Participant has also reviewed the terms of the First Loan Documentation with counsel of Participant’s choosing;

(e) There are no material pending or, so far as is known to Participant, threatened, legal proceedings to which Participant is or may be made a party or to which any of its property is or may become subject, which has not been fully disclosed in the material submitted to Developer which could materially adversely affect the ability of Participant to carry out its obligations hereunder; and

(f) There is no action or proceeding pending or, to Participant's best knowledge, threatened, looking toward the dissolution or liquidation of Participant and there is no action or proceeding pending or, to Participant's best knowledge, threatened by or against Participant which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of Participant to carry out its obligations hereunder.

Each of the foregoing items shall be deemed to be an ongoing representation and warranty. Participant shall advise Developer in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items.

## 200. SALE OF THE PROPERTY

### 201. Purchase Consideration.

**201.1 Purchase Price.** Participant agrees to purchase and, subject to the satisfaction of the Conditions Precedent set forth in Section 209 of this Agreement, Developer agrees to sell the Real Property (including the Improvements) to Participant by use of the Grant Deed Containing Resale Restrictions for the Purchase Price. The Purchase Price will be represented by cash and promissory notes as follows: (i) the Sweat Equity Amount; (ii) the execution and delivery to the City of the First Loan Note, which shall be secured by the First Deed of Trust; and (iii) the execution and delivery by Participant of the Habitat Homebuyer (Junior) Note, together with the Habitat Second Trust Deed.

Participant acknowledges and agrees that the fair market value of the Real Property as of the Date of Agreement without regard to the restrictions for Affordable Housing Cost and Very Low Income Affordable Housing as contained in the Grant Deed Containing Resale Restrictions would be and shall be deemed to be Two Hundred Forty Five Thousand Hundred Dollars (\$245,000.00).

Participant further agrees and acknowledges that the Real Property is being sold by Developer to Participant subject to the restrictions on affordability and use as contained in this Agreement, the Grant Deed Containing Resale Restrictions and the other attachments to this Agreement and that but for those restrictions (and Participant's agreement to comply therewith), Developer would not have agreed to convey the Real Property to Participant.

Participant acknowledges that the First Loan shall be due and payable as provided under the First Loan Note Documentation and amounts due and payable under the Habitat Homebuyer Loan shall be due and payable as provided herein.

**201.2 First Loan Note.** The First Loan Note shall be in an amount determined by the City based upon a price that constitutes Affordable Housing Cost for a Very Low Income Housing taking into account a utility allowance, an estimate of property taxes and assessments and an estimate of casualty insurance; the City has the power to establish the amount of the First Loan Note, as well as the rate of interest. There will be no negative amortization under the First Loan Note. The



Second Note shall be in an amount and at an interest rate equal to that provided in the First Loan Note. The First Loan shall be secured by the First Deed of Trust. The provisions of the First Loan Note are set forth in the Homebuyer Loan Agreement.

### 201.3 Habitat Homebuyer (Junior) Note.

(a) **Habitat Homebuyer (Junior) Note Provisions.** Payment of the Habitat Homebuyer (Junior) Note shall be secured by the Habitat Second Trust Deed. The Habitat Homebuyer (Junior) Note shall contain the following provisions:

(i) **Interest Rate; Term.** The Habitat Homebuyer (Junior) Note Amount shall have a term of forty five (45) years and accrue interest at the rate of zero percent (0.00%), as more particularly set forth in the Habitat Homebuyer (Junior) Note; provided that if an event of acceleration occurs as set forth in Section 201.5(a)(iii), the entire amount of the Habitat Homebuyer (Junior) Note shall be accelerated and shall be immediately due and payable in full.

(ii) **Time of Payment.** Payments shall be due on the first day of each month after the Conveyance and shall continue to and including the Maturity Date (unless the amount thereof has been previously satisfied).

(iii) **Acceleration.** In addition to those other amounts payable under this Agreement, the whole of the Habitat Homebuyer Loan Amount shall become due and immediately payable to Developer by Participant upon the occurrence of any one of the following events of acceleration:

(A) Participant sells or transfers the Real Property (or any part thereof) by any means, including, without limitation, the lease, exchange or other disposition of the Real Property or any interest therein, whether voluntary or involuntary, except (A) a sale of the Real Property to a qualified Very Low Income Household at an Affordable Housing Cost with Developer's prior written approval accomplished in strict conformity with Section 301.1 hereof, or (B) the transfer of the Real Property solely as a result of the marriage, divorce, incompetency or death of one or more individuals constituting Participant, so long as the transferee(s) give written notice supported by reasonable evidence of such event to Developer within thirty (30) days of its occurrence and the transferee(s) assume Participant's obligations under this Agreement, by execution of an assignment and assumption agreement to be provided by Developer, or (C) a sale or transfer which under federal law would not, by itself, permit Developer to exercise a due on sale or due on encumbrance clause;

(B) Participant fails to occupy the Real Property as Participant's principal residence pursuant to Section 301.5 of this Agreement or is in default of any other obligation under this Agreement;

(C) The occurrence of the Maturity Date.

(iv) **Security.** Payment under the Habitat Homebuyer (Junior) Note, shall be secured by a deed of trust and rider thereto encumbering the Real Property, substantially in the form of the Habitat Second Trust Deed. The Habitat Second Trust Deed shall be executed by Participant, as trustor, in favor of Developer, as beneficiary. The Habitat Second Trust

Deed shall be subordinate to only the Grant Deed Containing Resale Restrictions and the First Deed of Trust.

(v) **Application of Payments.** Payments by Participant shall be applied first to the Habitat Homebuyer Loan, until it has been fully satisfied, and then to the First Loan. In any event, the restrictions of the Grant Deed Containing Resale Restrictions shall continue in full force and effect, notwithstanding any such prepayment or other payments without regard to amount.

**201.4 Repayment.** If there is an event of acceleration pursuant to Section 201.4(a)(iii) above, Participant shall pay amounts due under the Habitat Homebuyer (Junior) Note. The whole of the Habitat Homebuyer (Junior) Note, shall be due in full when an event of acceleration occurs.

**201.5 Transactional Costs.** Transactional costs in connection with the initial sale of the Real Property by Developer to Participant shall be allocated as provided in Section 202 hereto. Thereafter, in connection with any refinancing, sale, transfer or any modification of this Agreement or any instruments promulgated thereunder, all of Developer's costs shall be borne by Participant.

**202. Escrow.** Developer agrees to open an escrow for the conveyance of the Real Property (the "Escrow") with Capree Escrow or another mutually acceptable escrow holder ("Escrow Agent") for the Conveyance, by the time established therefor in the Schedule of Performance. The Escrow Agent shall accomplish the recordation of the Grant Deed Containing Resale Restrictions, the City Homebuyer Covenants, the Deed of Trust, and the Habitat Second Trust Deed all as more particularly set forth herein. This Agreement constitutes the joint basic escrow instructions of Developer and Participant for the Conveyance, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the Escrow. Developer and Participant shall provide such additional escrow instructions as shall be necessary for and consistent with this Agreement. The Escrow Agent is hereby empowered to act under this Agreement, and the Escrow Agent, upon indicating within five (5) days after the opening of the Escrow its acceptance of the provisions of this Section 202, in writing, delivered to Developer and Participant, shall carry out its duties as Escrow Agent hereunder. Upon delivery of the Grant Deed Containing Resale Restrictions, the First Deed of Trust, the City Homebuyer Covenants, the Notice of Affordability Restriction and the Habitat Second Trust Deed to the Escrow Agent, the Escrow Agent shall record the Grant Deed Containing Resale Restrictions when title can be vested in Participant in accordance with the terms and provisions of this Agreement and the Homebuyer Loan Agreement; in the event of conflict between this Section 202 and the Homebuyer Loan Agreement, the Homebuyer Loan Agreement shall control. Immediately thereupon, the Escrow Agent shall record the City Homebuyer Covenants, the First Deed of Trust, then the Habitat Second Trust Deed, then the Notice of Affordability Restriction. No additional deed(s) of trust may be recorded unless and until the prior written concurrence of the Executive Director is first obtained. The Escrow Agent shall pay any applicable transfer tax. Any insurance policies covering the Real Property are not to be transferred.

Participant shall pay in escrow to the Escrow Agent all fees, charges and costs up to Participant's Share of Closing Costs (as defined below) promptly after the Escrow Agent has notified Participant of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for closing the Escrow, including, without limitation, the following:



(a) The Purchase Price, which shall be in the form of: (i) the Sweat Equity Amount; (ii) the First Loan Note; and (iii) the Habitat Homebuyer (Junior) Note; and

(b) Participant's share of closing costs, including: (i) that portion of the premium for title insurance to be paid by Participant pursuant to Section 207 of this Agreement; (ii) recording fees; (iii) notary fees; (iv) any state, county or city documentary stamps (with such stamps to be determined based upon the Sales Price); and (v) one-half of the escrow fee; provided that Participant's share of closing costs shall be the sum of Five Hundred Dollars (\$500.00)(the "Participant's Share of Closing Costs") with the balance of closing costs to be borne by Developer. All closing costs other than Participant's Share of Closing Costs shall be borne by Developer.

Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for closing the Escrow:

(c) Costs necessary to place title to the Real Property in the condition for conveyance required by the provisions of this Agreement;

(d) Cost of drawing documents (if applicable);

(e) That portion of the premium for title insurance to be paid by Developer pursuant to Section 207 of this Agreement;

(f) One-half of the escrow fee;

(g) The premium for a home warranty plan (the "Home Warranty Plan") for the Real Property for a period of not less than one (1) year;

(h) Ad valorem taxes, if any, upon the Real Property for any time prior to transfer of title; and

(i) Any transfer tax.

Developer shall timely and properly execute, acknowledge and deliver a deed in substantially the form of the Grant Deed Containing Resale Restrictions.

The Escrow Agent is authorized to:

(a) Pay, and charge the parties for any fees, charges and costs payable under this Section 202 of this Agreement. Before such payments or charges are made, the Escrow Agent shall notify the parties hereto, as well as the City, of its estimate of the fees, charges and costs necessary to conform title and close the Escrow.

(b) Disburse funds deposited for the benefit of Developer in the escrow established pursuant to Section 202 of this Agreement, and shall deliver the deed and other documents to the parties entitled thereto when the conditions of this Escrow have been fulfilled by Developer and Participant.

(c) Record any instruments delivered through this Escrow, if necessary or proper, to vest title in Participant in accordance with the terms and provisions of this Agreement.

All funds received in this Escrow shall be deposited by the Escrow Agent, with other escrow funds of the Escrow Agent in an interest earning general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments are to be made on the basis of a thirty (30) day month. Interest shall be applied for the benefit of the party depositing such funds.

If this Escrow is not in condition to close on or before the time for conveyance established in Section 203 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, demand from the Escrow Agent the return of its money, papers or documents deposited with the Escrow Agent, with a copy to be concurrently transmitted by such party to the other party. No demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the ten (10) day period, in which event the Escrow Agent is authorized to hold all money, papers and documents with respect to the Real Property until instructed by a mutual agreement of the parties or by a court of competent jurisdiction. If no such demands are made, the Escrow shall be closed as soon as possible.

The Escrow Agent shall not be obligated to return any such money, papers or documents, other than those deposited by the City or the Authority (which documents may be withdrawn by City or Authority upon the request of either) except upon the written instructions of both Developer and Participant or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

Any amendment to these Escrow instructions shall be in writing and signed by each of the City, Developer and Participant. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

Communications from the Escrow Agent to Developer, the City, the Authority or Participant shall be directed to the addresses and in the manner established in Section 501 hereof.

The liability of the Escrow Agent under this Agreement insofar as Escrow Agent performs as an escrow holder and without limitation to performance by Escrow Agent in another capacity (such as title insurer) is limited to performance of the obligations imposed upon it under Sections 202 to 209, both inclusive, of this Agreement.

**203. Conveyance of Title.** Subject to any extensions of time mutually agreed upon between Developer and Participant, the Conveyance shall be completed on or prior to the date specified therefor in the Schedule of Performance. Said Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Participant and Developer.

**204. Form of Deed.** Developer shall convey to Participant title to the Real Property by grant deed in the form of the Grant Deed Containing Resale Restrictions.

**205. Condition of Title.** Developer shall convey to Participant fee simple merchantable title to the Real Property, excepting therefrom mineral rights, free and clear of all recorded or unrecorded liens, encumbrances, covenants, assessments, easements, leases and taxes, except for the provisions contained in the Grant Deed Containing Resale Restrictions and such other encumbrances

to which Participant may consent, which approval shall not be unreasonably withheld; provided that, notwithstanding the foregoing, conveyance subject to covenants and easements of record which do not affect the use of the Real Property for the purposes set forth in this Agreement shall be deemed to comply with this Section 205. Title will be subject to the Grant Deed Containing Resale Restrictions, the City Homebuyer Covenants, the First Deed of Trust and the Habitat Second Trust Deed. Participant shall review easements prior to closing consistent with the foregoing.

**206. Recordation of Documents.** The Escrow Agent shall file the Grant Deed Containing Resale Restrictions, the City Homebuyer Covenants, the First Deed of Trust and the Habitat Second Trust Deed for recordation among the Official Records, when the Escrow Agent is prepared to deliver to Participant the title policy described in and conforming to Section 207 of this Agreement, with a copy thereof to Developer. In the event other deeds of trust are recorded, the Escrow Developer shall delivery a copy thereof to Developer.

**207. Title Insurance.**

(a) Concurrently with recordation of the Grant Deed Containing Resale Restrictions, First American Title Company of California, or another title company designated by the City (the "Title Company") shall deliver to Participant a title insurance policy issued by the Title Company insuring that the title to the Real Property is vested in Participant in the condition required by Section 205 of this Agreement together with such additional exceptions as may be approved by Participant. The title insurance policy shall be based upon the amount of the Sales Price. Developer shall bear that amount equal to the cost of a standard CLTA policy. The Title Company shall provide Developer with a copy of the title insurance policy. All additional costs incurred for or incidental to title insurance shall be allocable to Participant. Participant may, at its option and at its cost, obtain coverage in excess of the amount of the Sales Price and may obtain endorsements or an ALTA policy.

(b) At Developer's election, Developer shall, at its cost, obtain a title insurance policy incurring its beneficial interest secured by the Habitat Second Trust Deed.

**208. Taxes and Assessments.** Ad valorem taxes and assessments, if any, on the Real Property, levied, assessed or imposed for any period commencing after conveyance of title, shall be borne by Participant.

**209. Conditions Precedent.** Prior to and as conditions to the Conveyance, Participant shall complete (or cause to be completed) each of items 1, 2, 3, 4, 5, 6, 7 and 9 by the times established therefor in the Schedule of Performance and item 9 shall be satisfied (or, if no time is specified, prior to the Conveyance):

1. Developer reaffirms to City that Participant has satisfied the Homebuyer Work Qualifications prior to the approval by Habitat of this Agreement (and prior to approval by City of the Homebuyer Loan Agreement for such Program Participant).

2. Participant shall have deposited the applicable down payment, if any, into Escrow for release to Developer;

3. Participant shall have executed and deposited into Escrow for delivery to Developer at closing each of the following: (i) the First Loan Note; (ii) the Grant Deed Containing Resale Restrictions; (iii) the Truth in Lending Disclosure; (iv) the First Deed of Trust; (v) the City

Homebuyer Covenants; (vi) the Habitat Homebuyer (Junior) Note; (vii) the Habitat Second Trust Deed; and (viii) Notice of Affordability Restriction;

4. Participant shall have obtained a commitment for property insurance based upon the full replacement value of the improvements to the Real Property;

5. Participant shall have paid to escrow all fees and costs payable by Participant in accordance with Section 202 of this Agreement;

6. Participant shall have completed such homebuyer training program as may be approved by the Executive Director and Developer shall have confirmed to the City that such completion has occurred;

7. Developer shall have determined, based upon information provided by Participant, that (a) Participant intends to occupy the Real Property as Participant's principal residence, (b) Participant is a Qualifying Buyer, (c) the use and occupancy of the Real Property will be in conformity with this Agreement, and (d) the proposed purchase by Participant occurs at Affordable Housing Cost as calculated by Developer;

8. Developer shall have arranged for the delivery at closing to Participant of the Home Warranty Plan (to be obtained at Developer's cost); and

9. The Title Company shall be prepared to issue the owner's policy of title insurance referenced in Section 207 hereof and, if requested by Developer, the lender's policy of title insurance for the Habitat Second Trust Deed (for the benefit of Developer).

The foregoing items 1 to 9, inclusive, together constitute the "Conditions Precedent."

### **300. USE OF THE PROPERTY**

**301. Affordable Housing.** Participant covenants and agrees to use the Real Property for the following purposes only and the following covenants shall run with the land:

**301.1 Forty-Five (45) Year Affordability Requirements.** For a period ("Affordability Period") commencing upon the date on which Participant acquires the Real Property and terminating on the forty-fifth (45th) anniversary of that date ("Affordability Period Termination Date"), the Real Property may be sold only to a Very Low Income Household at an Affordable Housing Cost ("Qualifying Buyer") that is also an "Eligible Homebuyer" (as defined below) with Developer's and City's prior written approval. These requirements shall be set forth in Grant Deed Containing Resale Restrictions in the form which is attached hereto as Attachment No. 3 and incorporated herein by this reference. The Grant Deed Containing Resale Restrictions executed by Participant and Developer and shall be recorded as an encumbrance to the Real Property. Participant acknowledges that the times for performance and/or maturity under the First Loan and the Habitat Second Loan do not affect the duration of the requirements concerning maintaining affordability throughout the Affordability Period.

(a) **Verification of Income; Back End Ratio.** In order to verify the Buyer's status as a Very Low Income Household, Participant shall submit or cause the proposed Buyer to submit to each of the City and Developer the identity of the proposed Buyer and adequate information evidencing the income and household size of the proposed Buyer. Said income

information shall be submitted together with the notice of proposed sale in accordance with Section 301.2 hereof not less than thirty (30) days prior to the opening of escrow for the proposed sale and shall include original or true copies of pay stubs, income tax records or other financial documents in order that each of the City and Developer may determine and verify the household income of the proposed Buyer to determine whether the proposed Buyer is a Very Low Income Household and whether the Real Property is to be transferred to such Buyer at an Affordable Housing Cost. If City or Developer is unable to verify the Buyer's income as provided herein prior to the proposed sale, then the Buyer's income shall be deemed to exceed the maximum allowable income limit for Qualifying Buyers. In addition, each purchaser shall purchase at a price which does not exceed Affordable Housing Cost and with a "Back End Ratio" (as defined below) that does not exceed forty three percent (43%) of household income, and which executes and delivers to City agreements with the City substantially in form acceptable to and approved by City. For purposes of this paragraph, "Back End Ratio" means the ratio of (i) monthly payments as required on all obligations of a property owner or prospective property owner, including without limitation all housing debt, consumer debt, and any other debt, to (ii) the gross income of the property owner or prospective property owner; for this purpose, gross income of a household shall be determined in accordance with 24 CFR Part 5. Where there is an obligation as to which monthly payments are not expressed as a liquidated amount (but excepting therefrom the "Homebuyer Senior Loan", as defined in the City Loan Agreement, should such loan remain outstanding), payments are to be imputed based upon the full satisfaction of such obligations over five (5) years (assuming substantially level payments) or less or such other amortization period as may be approved on a case-by-case basis by City.

**301.2 Notice of Developer and City.** Participant (or Participant's heirs following the death of Participant) agrees to notify Developer not less than thirty (30) days prior to (i) the opening of escrow for the sale of the Real Property, (ii) the signing of any agreements or documents related to the transfer, including, without limitation, lease, exchange or other disposition of any interest in the Real Property, or (iii) the close of Participant's probate estate. Nothing in this Section 301.2, however, shall be construed to authorize the Real Property to be leased or rented.

**301.3 Use of Real Property.** Participant covenants and agrees to devote, use and maintain the Real Property in accordance with this Agreement and the Grant Deed Containing Resale Restrictions. All uses conducted on the Real Property, including, without limitation, all activities undertaken by Participant pursuant to this Agreement, shall conform to all applicable provisions of the City Code, and the recorded documents pertaining to and running with the Real Property.

**301.4 Maintenance of Real Property.** Participant shall maintain the interior of the Real Property (a) in a clean, safe and presentable manner, (b) consistent with community standards, (c) in a manner which will uphold the value of the Real Property, (d) in accordance with the maintenance requirements of the Grant Deed Containing Resale Restrictions, (e) in accordance with the City Code and the Uniform Housing Code, and (f) in accordance with any and all covenants and agreements established by any homeowner's association or other regulatory entity recognized by area property owners. Participant shall not allow the Real Property to accumulate debris, or allow inoperable or abandoned vehicles on the Real Property, or allow any other unsightly or dangerous conditions on the Real Property. Participant shall also be responsible to maintain drainage facilities at the Real Property as set forth in the Homebuyer Loan Agreement. The covenants for the maintenance of the Real Property shall run with the Real Property and shall remain in effect until the Affordability Period Termination Date. Participant also agrees to comply with all applicable federal, state and local laws.

**301.5 Occupancy Standards.** The Real Property shall be used as the principal personal residence of Participant and Participant's immediate family and for no other purpose. Participant shall not enter into an agreement for the rental or lease of the Real Property. Participant shall not allow overcrowded conditions to occur in the Real Property, and the maximum occupancy of the Real Property shall not exceed the maximum occupancy allowed by each of the City Code or statutes of the State of California. Participant shall, upon demand by Developer or City, submit to each of City and Developer an affidavit of occupancy verifying Participant's compliance with this Section 301.5. Such affidavit may be required by each of City and Developer on an annual basis.

**301.6 No Discrimination.** Participant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Real Property, nor shall Participant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Real Property. The foregoing covenants shall run with the land.

**301.7 Habitat or City May Maintain.** Participant and any subsequent owner(s) of any portion of the Real Property shall properly maintain the Improvements, landscaping and yard areas on such portion of the Real Property owned by such owner(s), and if such Improvements, landscaping and yard areas are not so maintained, and such condition is not corrected as soon as possible after notice from Developer or the City, then either Developer or the City may, but shall not be required to, perform the necessary maintenance and the owner(s) shall pay such costs as are reasonably incurred for such maintenance.



**302. Effect of Violation of the Terms and Provisions of this Agreement After the Conveyance.** Developer is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. Developer shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled; provided that in the event City or Authority is pursuing remedies as to the Real Property or the Homebuyer Loan Agreement or the attachments thereto, the City, then the Authority, shall have a priority right at all times regarding remedies (and control over which remedies are sought).

#### **400. DEFAULTS AND REMEDIES**

**401. Defaults – General.** Subject to the extensions of time set forth in Section 503, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. A party claiming a default (claimant) shall give written notice of default to the other party, specifying the default complained of and the actions required to correct such default; to be effective as notice to the other party, written notice must also be delivered concurrently to the City.

Except as otherwise expressly provided in Sections 406 and 407 of this Agreement, the claimant shall not institute proceedings against the other party if the other party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy as soon as reasonably practicable after receipt of such notice.

Pursuit of the remedies made available pursuant to these Sections 400 *et seq.* shall in no way waive or diminish either party's rights or remedies made available pursuant to Section 301 hereof.

**402. Institution of Legal Actions; Applicable Law; Interpretation.** In addition to any other rights or remedies and subject to the restrictions in Section 401 (but subject to the limitations as to Participant's rights to pursue remedies as set forth in the last paragraph of Section 401), either party may institute legal action 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 legal or equitable remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Riverside, State of California.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. This Agreement shall be interpreted in a manner to favor first the City's, then the Authority's, then Developer's interest in maintaining the long term affordability of the Real Property. The City has made a substantial investment in making the Real Property available. Each of the City and the Authority shall be given notice of any actions brought and shall have the right but not the obligation to appear therein.

**403. Acceptance of Service of Process.** In the event that any legal action is commenced by Participant against Developer, service of process on Developer shall be made by personal service upon the Executive Director or in such other manner as may be provided by law.

In the event that any legal action is commenced by Developer against Participant, service of process on Participant shall be made by personal service upon [homebuyer A] or [homebuyer B] and shall be valid whether made within or without the State of California or in such other manner as may be provided by law; service upon either [homebuyer A] or [homebuyer B] shall be deemed to constitute service upon each of [homebuyer A] or [homebuyer B] and Participant.

**404. Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**405. Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**406. Damages.** If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within sixty (60) days after service of the notice of default (or within such other period as is set forth herein), the defaulting party shall be liable to the other party for any damages caused by such default (excepting as otherwise set forth in Section 401), and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

**407. Specific Performance.** If either party defaults under any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days of service of the notice of default, or such other time limit as may be set forth herein with respect to such default, the non-defaulting party at its option may thereafter (but not before) commence an action for specific performance of terms of this Agreement.

**408. Remedies and Rights of Termination by Participant.** This Agreement may, at any time prior to the Conveyance, at the option of Participant, be terminated by written notice thereof to Developer, and thereupon neither Developer nor Participant shall have any further rights or obligations with respect to this Agreement.

**409. Remedies and Rights of Termination by Developer.** In the event that Participant fails to satisfy the Conditions Precedent by the time established therefor in the Schedule of Performance; then this Agreement and any rights of Participant or any assignee or transferee in the Agreement, or arising therefrom with respect to Developer, the Real Property or any other property referred to in this Agreement, shall, at the option of Developer, be terminated by Developer. In the event of termination under this Section 409, neither party shall have any rights against the other with respect to this Agreement.



## 500. GENERAL PROVISIONS

**501. Notices, Demands and Communications Between the Parties.** Written notices, demands and communications between Developer and Participant shall be sufficiently given if delivered by hand or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Developer and Participant at the addresses specified in Sections 104 and 105, respectively, with a copy to City. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 501. Notice to [homebuyer A], [homebuyer B] or Participant shall be deemed to constitute service upon each of [homebuyer A], [homebuyer B] and Participant. Notices to the City and the Authority shall be given in the manner generally described above as follows: (i) for the City, \_\_\_\_\_, Attn: \_\_\_\_\_; and (ii) for the Authority, \_\_\_\_\_, Attn: \_\_\_\_\_.

Any written notice, demand or communication between Participant and Developer shall be deemed received immediately if delivered by hand and shall be deemed received on the fifth (5th) day from the date it is postmarked if delivered by registered or certified mail. Communications to the City or Authority shall only be deemed received when receipt is acknowledged by the City or Authority, respectively.

**502. Conflicts of Interest.** No member, official or employee of Developer shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

**503. Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to, as confirmed by the City: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; or acts or omissions of the other party. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and Participant but only after first obtaining the written concurrence of City, which City may grant, conditionally grant, withhold, or deny at its sole and absolute discretion. Notwithstanding the foregoing portion of this Section 503, Participant is not entitled pursuant to this Section 503 to an extension of time to perform because of past, present, or future difficulty in obtaining suitable financing for the purchase of the Real Property.

**504. No Third Party Beneficiaries of This Agreement Except City and Authority.** Except for the City and the Authority, each of which shall be deemed a third party beneficiary of this Agreement, there shall be no third party beneficiaries of this Agreement.

**505. Non-liability of Officials and Employees of Developer, Authority or City.** No member, official or employee of Developer, the Authority or the City shall be personally liable to Participant, or any successor in interest, in the event of any default or breach by Developer or for any

amount which may become due to Participant or its successors, or on any obligations under the terms of this Agreement.

**600. ENTIRE AGREEMENT, WAIVERS**

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 18 and Attachment Nos. 1 through 8, which constitutes the entire understanding and agreement of the parties. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of Developer and Participant, and all amendments hereto must be in writing by the appropriate authorities of Developer and Participant, the Authority and the City. This Agreement, including without limitation the attachments hereto, may not be amended without the prior written approval of each of the City and the Authority.

**700. TIME FOR ACCEPTANCE OF AGREEMENT BY DEVELOPER**

This Agreement, when executed by Participant and delivered to Developer, must be authorized and executed by Developer on or before [\_\_\_\_\_ \_\_, 201\_] or this Agreement shall be void, except to the extent that Participant shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. The date of this Agreement shall be the date when it shall have been signed by Developer.

**IN WITNESS WHEREOF**, Developer and Participant have signed this Housing Disposition Agreement on the respective dates set forth below.

**“DEVELOPER”**

**HABITAT FOR HUMANITY, RIVERSIDE, INC.**,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Kathy Michalak, Executive Director

**“PARTICIPANT”**

**[homebuyer A and homebuyer B]**

By: \_\_\_\_\_  
[homebuyer A]

By: \_\_\_\_\_  
[homebuyer B]

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**ATTACHMENT NO. 1**  
**LEGAL DESCRIPTION OF THE PROPERTY**

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

[legal description: to come].

APN: [APN: to come]

(Very Low Income)

ATTACHMENT NO. 1

**ATTACHMENT NO. 2**  
**SCHEDULE OF PERFORMANCE**

- 1. **Execution of Agreement by Developer.** Developer shall approve and execute this Agreement, and shall deliver one (1) copy thereof to Participant. Not later than [\_\_\_\_\_, 201\_].
- 2. **Conditions Precedent.** The Conditions Precedent shall have been satisfied. Prior to the Conveyance and prior to [\_\_\_\_\_, 201\_].
- 3. **Conveyance.** The Grant Deed Containing Resale Restrictions, the First Deed of Trust, the Acknowledgment of Covenants, the City Homebuyer Covenants and the Habitat Second Trust Deed are recorded among the Official Records. Within ten (10) days after the satisfaction of the Conditions Precedent.

**Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT**

(Very Low Income)

ATTACHMENT NO. 2

ATTACHMENT NO. 3

GRANT DEED CONTAINING RESALE RESTRICTIONS

Recording Requested by:

When Recorded Return to and  
Mail Tax Statements to:

[homebuyer A and homebuyer B]  
[address: to come]  
Moreno Valley, California [zip code]

APN: [APN: to come]

GRANT DEED CONTAINING RESALE RESTRICTIONS

For a valuable consideration receipt of which is hereby acknowledged,

Habitat for Humanity, Riverside, Inc., a California nonprofit public benefit corporation, of the State of California, herein called "Grantor" (or "Developer") acting to carry out the Redevelopment Plan, herein called "Redevelopment Plan" for the Moreno Valley Redevelopment Project, herein called "Project", under the Community Redevelopment Law of the State of California, hereby grants to **[homebuyer A and homebuyer B]**, husband and wife, herein collectively called "Grantee", the real property hereinafter referred to as "Real Property", described in Exhibit A attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants or record described there.

1. Said Real Property is conveyed in accordance with that certain unrecorded Amended and Restated Affordable Housing Agreement by and among Developer, the City of Moreno Valley, a municipal corporation (the "City"), and the Moreno Valley Housing Authority (the "Authority") dated as of \_\_\_\_\_, 2015 (the "ARAFA"), a copy of which is on file with the City at its offices as a public record and which is incorporated herein by reference. Grantee has entered into that certain unrecorded Housing Disposition Agreement with Developer dated as of \_\_\_\_\_, 201\_ (the "HDA"); Grantee has further entered into that certain unrecorded Homebuyer Loan Agreement dated as of \_\_\_\_\_ with the City (the "Homebuyer Loan Agreement" and, together with the HDA, the "Purchase and Loan Agreements." Grantee has agreed to subject the Real Property to certain conditions, covenants and restrictions. Capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Homebuyer Loan Agreement and, if not defined therein, then in the ARAFA, and if not defined therein then in the HDA.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Grantee shall restrict the Real Property and the improvements thereon in accordance with this Grant Deed Containing Resale Restrictions to preserve its value for the benefit of Grantee, its successors and the surrounding neighborhood.

3. The Real Property is conveyed to Grantee at a purchase price, herein called “Purchase Price,” determined in accordance with the Purchase and Loan Agreements and the restrictions imposed on the Real Property. Therefore, Grantee hereby covenants and agrees that the Grantee shall maintain and use the Real Property as Grantee’s principal residence at all times during the Grantee’s ownership of the Real Property, and that, for a period (“Affordability Period”) commencing upon the date on which Grantee acquires the Real Property and terminating on the forty-fifth (45th) anniversary of that date (“Affordability Period Termination Date”), the Real Property may be sold only to a Very Low Income Household at an Affordable Housing Cost (“Qualifying Buyer”) with City’s prior written approval. In addition, each purchaser shall purchase at a price which does not exceed Affordable Housing Cost and with a Back End Ratio (as defined below) that does not exceed forty three percent (43%) of household income, and which executes and delivers to City agreements with the City substantially in form acceptable to and approved by City.

“Very Low Income Household” shall mean a person or family of Very Low or Low Income, as these terms are defined by California Health and Safety Code Section 50105, that as of the date of this Agreement earns 50% or less of the current annual median income adjusted for family size for the Riverside County area.

“Affordable Housing Cost” means as follows:

If Grantee is a person or family of Very Low Income earning not more than fifty percent (50%) of Riverside County Median Income, “Affordable Housing Cost” shall mean a monthly housing cost which does not exceed thirty percent (30%) times fifty percent (50%) of Riverside County median income adjusted for family size appropriate to the Real Property, as set forth in Health and Safety Code Section 50052.5 and the regulations of the State of California.

“Back End Ratio” means the ratio of (i) monthly payments as required on all obligations of a property owner or prospective property owner, including without limitation all housing debt, consumer debt, and any other debt, to (ii) the gross income of the property owner or prospective property owner; for this purpose, gross income of a household shall be determined in accordance with 24 CFR Part 5. Where there is an obligation as to which monthly payments are not expressed as a liquidated amount (but excepting therefrom the “Homebuyer Senior Loan”, as defined in the Homebuyer Loan Agreement, should such loan remain outstanding), payments are to be imputed based upon the full satisfaction of such obligations over five (5) years (assuming substantially level payments) or less or such other amortization period as may be approved on a case-by-case basis by City.

“Monthly Housing Cost” means, for a Very Low Income Household purchasing the Real Property, all of the following associated with the Real Property, estimated or known as of the date of the proposed sale of the Real Property: (i) principal and interest payments on a mortgage loan, and any loan insurance fees associated therewith (provided that if the mortgage loan obtained by the purchaser contains an adjustable interest rate, then for the purposes of this Grant Deed Containing Resale Restrictions the principal and interest payments shall be deemed to be those which would be due upon a mortgage loan amortized over a thirty year period with an interest rate equal to prevailing market rates for thirty-year fixed-rate mortgage loans; provided further that such clause shall not be deemed to permit the use of adjustable interest rate loans with respect to the Real Property); (ii) property taxes and assessments; (iii) fire and casualty insurance covering replacement value of property improvements; (iv) any homeowner association fees; and (v) a reasonable utility allowance.

Monthly housing cost of a purchaser shall be an average of estimated costs for the next twelve (12) month period.

4. **[Reserved].**

5. **Encumbrances.**

a. **No Subordination.** The provisions of this Grant Deed Containing Resale Restrictions shall not be subordinated without the prior written approval of the City.

b. **Request for Notice of Default.** Grantor may cause a Request for Notice to be recorded on the Real Property subsequent to the recordation of a deed of trust or mortgage requesting a statutory notice of default as set forth in California Civil Code Section 2924b.

6. **Uses.** The Grantee covenants and agrees to devote, use and maintain the Real Property in accordance with this Grant Deed Containing Resale Restrictions. All uses conducted on the Real Property, including, without limitation, all activities undertaken by the Grantee pursuant to this Grant Deed Containing Resale Restrictions, shall conform to all applicable provisions of the Municipal Code of the City of Moreno Valley (the "City Code"), and the recorded documents pertaining to and running with the Real Property for the benefit of Grantor, the City and the Authority.

7. **Nondiscrimination Covenants.** The Grantee covenants by and for itself and any successors in interest that shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

8. **Maintenance of Real Property.** Grantee shall maintain the improvements and landscaping on the Real Property in a manner consistent with community standards which will uphold the value of the Real Property, in accordance with the City Code. Grantee also agrees to comply with all applicable federal, state and local laws.

9. **Occupancy Standards.** The Real Property shall be used as the principal personal residence of Grantee and Grantee's immediate family and for no other purpose. Grantee shall not enter into an agreement for the rental or lease of the Real Property. Grantee shall not allow overcrowded conditions to occur in the Real Property, and the maximum occupancy of the Real Property shall not exceed the maximum occupancy allowed by each of the City Code and statutes of the State of California. Grantee shall, upon demand by Grantor, City or Authority, submit to each of City, Authority and Grantor an affidavit of occupancy verifying Grantee's compliance with this Section 10. Such affidavit may be required by City, Authority or Grantor on an annual basis

10. **Effect of Violation of the Terms and Provisions of this Grant Deed Containing Resale Restrictions.**

ATTACHMENT NO. 3-3

(Very Low Income)



a. **In General.** The covenants established in this Grant Deed Containing Resale Restrictions shall, without regard to technical classification and designation, be binding for the benefit and in favor of each of City, Authority and Grantor, its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Grant Deed Containing Resale Restrictions shall remain in effect for the periods of time specified herein. The covenants against discrimination shall remain in effect in perpetuity. each of City, Authority and Grantor is deemed the beneficiary of the terms and provisions of this Grant Deed Containing Resale Restrictions and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Grant Deed Containing Resale Restrictions and the covenants running with the land have been provided. each of City, Authority and Grantor shall have the right, if the Grant Deed Containing Resale Restrictions or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Grant Deed Containing Resale Restrictions and covenants may be entitled; provided that the City, then the Authority shall have priority over Grantor regarding remedies and the control over remedies.

11. **Indemnification.** Grantee shall pay for, defend, indemnify and hold harmless each of City, Authority and Grantor and their respective officers, officials, agents, employees, representatives, and volunteers from and against any loss, liability, claim, or judgment relating in any manner to the Grantee's use of the Real Property or Grantee's violation of this Grant Deed Containing Resale Restrictions. The Grantee shall remain fully obligated for the payment of taxes, liens and assessments related to the Real Property. There shall be no reduction in taxes for Grantee, nor any transfer of responsibility to City, Authority or Grantor to make such payments, by virtue of this Grant Deed Containing Resale Restrictions.

12. **Insurance.** Grantee shall maintain, during the term of this Grant Deed Containing Resale Restrictions, an all risk property insurance policy providing primary coverage and insuring the Real Property in an amount equal to the full replacement value of the structures on the Real Property. The policy shall name the each of City, Authority and Grantor as loss payee and shall contain a statement of obligation on behalf of the carrier to notify the each of City, Authority and Grantor of any material change, cancellation or termination of coverage at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. Grantee shall transmit a copy of the certificate of insurance to each of City, Authority and Grantor within thirty (30) days of the effective date of this Grant Deed Containing Resale Restrictions, and Grantee shall annually transmit to each of City, Authority and Grantor a copy of the certificate of insurance, signed by an authorized agent of the insurance carrier setting forth the general provisions of coverage. The copy of the certificate of insurance shall be transmitted to each of City, Authority and Grantor. Any certificate of insurance must be in a form, content and with companies approved by each of City, Authority and Grantor.

13. **Defaults.** Failure or delay by either party to perform any term or provision of this Grant Deed Containing Resale Restrictions which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Grant Deed Containing Resale Restrictions; provided, however, if such default is of the nature requiring more than thirty (30) days to cure, the defaulting party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice

ATTACHMENT NO. 3-4

(Very Low Income)

of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

14. **Non Waiver.** Failure to exercise any right City, Authority or Grantor may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.

15. **Governing Law; Interpretation.** The Grantee hereby agrees to comply with all ordinances, rules and regulations of each of City, Authority and Grantor and the City. Nothing in this Grant Deed Containing Resale Restrictions is intended to be, nor shall it be deemed to be, a waiver of any City ordinance, rule or regulation. This Grant Deed Containing Resale Restrictions shall be governed by the laws of the State of California. Any legal action brought under this Grant Deed Containing Resale Restrictions must be instituted in the Superior Court of the County of Riverside, State of California.

This Grant Deed Containing Resale Restrictions shall be interpreted in a manner to favor the City's interests, then the Authority's interests, then Grantor's interest in maintaining the long term affordability of the Real Property keeping in mind that the City has expended substantial moneys in making the Real Property available.

16. **Amendment of Grant Deed Containing Resale Restrictions.** No modification, rescission, waiver, release or amendment of any provision of this Grant Deed Containing Resale Restrictions shall be made except by a written agreement executed by the Grantee and each of City, Authority and Grantor.

17. **Covenants Running With the Land.** All covenants contained in this Grant Deed Containing Resale Restrictions shall be covenants running with the land. Grantee's obligation to maintain and use the improvements constructed as provided herein shall continue in effect until the expiration of the Affordability Period. Every covenant contained in this Grant Deed Containing Resale Restrictions against discrimination contained in paragraph 7 of this Grant Deed Containing Resale Restrictions shall remain in perpetuity.

18. **Covenants Binding.** All covenants without regard to technical classification or designation shall be binding for the benefit of the each of City, Authority and Grantor, and such covenants shall run in favor of the each of City, Authority and Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the each of City, Authority and Grantor is or remains an owner of any land or interest therein to which such covenants relate. The each of City, Authority and Grantor, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

**IN WITNESS WHEREOF**, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this \_\_ day of \_\_\_\_\_, 201\_.

**HABITAT FOR HUMANITY, RIVERSIDE, INC.**,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Kathy Michalak, Executive Director

The Grantee agrees to be bound by the covenants set forth above.

**[homebuyer A and homebuyer B]**

By: \_\_\_\_\_  
[homebuyer A]

By: \_\_\_\_\_  
[homebuyer B]

(Very Low Income)

ATTACHMENT NO. 3-6

**EXHIBIT "A"  
TO ATTACHMENT NO. 3**

**LEGAL DESCRIPTION OF THE PROPERTY**

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

[legal description: to come].

APN: [APN: to come]

(Very Low Income)

EXHIBIT A TO ATTACHMENT NO. 3

**ATTACHMENT NO. 4**

**ACKNOWLEDGMENT OF COVENANTS**

[same as Exhibit H to Homebuyer Loan Agreement]

**ATTACHMENT NO. 5  
DISCLOSURE STATEMENT**

I/we [homebuyer A and homebuyer B], husband and wife (collectively, "Participant") understand and agree that the provision of financial assistance from Habitat for Humanity, Riverside, Inc. ("Developer") is conditional on a number of factors, including, but not limited to:

- I/we are buying a single-family detached home, condominium, or town home within the corporate limits of the City of Moreno Valley, at [address: to come] (the "Real Property") which is available to me/us at Affordable Housing Cost pursuant to Health & Safety Code Section 50052.5.
- I/we will enter into an agreement with Developer entitled "Housing Disposition Agreement" (the "HDA"), which is sometimes referred to as the Habitat Homebuyer Purchase and Sale Agreement, a copy of which is on file with Developer as a public record. Capitalized terms not defined in this Disclosure Statement shall have the meanings set forth therefor in the HDA.
- I/we must qualify as a Very Low Income Household pursuant to Health & Safety Code Section 50105.
- I/we will be obligated to make payments on the Real Property under two promissory notes; the first note (the "Homebuyer Senior Note") which will be in the original principal amount of \_\_\_\_\_ (\$\_\_\_\_\_); the Homebuyer Senior Note will be secured by a first deed of trust (the "Homebuyer Senior Deed of Trust"). I/we will also be required to make payments under a second, junior note (the "Habitat Homebuyer Note") which will also be in the original principal amount of \_\_\_\_\_ (\$\_\_\_\_\_); the Habitat Homebuyer Note shall be secured by a second deed of trust (the "Habitat Homebuyer Deed of Trust." I/we will be responsible to make all payments when due under each of those two loans.

I/We further understand and agree that:

- I/we will be responsible for repaying and satisfying the other requirements of the First Loan and repaying the Habitat Homebuyer Loan. I/we acknowledge that monthly payments will be due and payable under the Habitat Homebuyer Loan by me/us as provided under the Habitat Homebuyer (Junior) Note. Payments under the First Loan shall be as provided under documentation provided by the maker of the First Loan; such documentation is a matter between the lender providing the First Loan and me/us and is not a matter with respect to which Developer has any responsibility.
- I will also be responsible for timely payments of property taxes and assessments and to obtain and pay for casualty insurance and utilities. There are not scheduled payments to the City under the Homebuyer Senior Note; however, I acknowledge that

moneys will become due and will be subject to acceleration in the event of my/our failure to comply with the Homebuyer Loan Agreement.

- While I/we will not be obligated by the Homebuyer Senior Loan to make regularly scheduled payments on such loan, I/we acknowledge that if I/we fail to comply with all aspects of the Homebuyer Senior Loan on a continuous basis, including without limitation occupying the Real Property in conformity with recorded covenants, the entire amount of the Homebuyer Senior Loan will become due and payable.
- If I/we repay the amount of the Habitat Homebuyer Loan, the Homebuyer Senior Loan, or both, this will *not* result in release or reconveyance of the deed of trust securing repayment of the Habitat Homebuyer Loan or the Homebuyer Senior Loan; such deed of trust also provides for the Real Property to remain subject to the deeds of trust, as well as the “Regulatory Agreement,” the “Grant Deed Containing Resale Restrictions” and the “City Homebuyer Covenants.”
- For a forty-five (45) year period commencing with the conveyance of the Real Property to me/us, the Real Property may only be transferred to Very Low Income Households at an Affordable Housing Cost, with the price not exceeding a Back End Ratio of forty three percent (43%), as more particularly described in the Housing Disposition Agreement, and the Real Property must be and remain owner-occupied.
- For a forty-five (45) year period, I/we will not be able to borrow where the Real Property would secure payment on a basis superior to the deed of trust securing repayment of the Habitat Homebuyer Loan.
- Due to the restrictions affecting the Real Property under the HDA, the Real Property will not increase in value like other properties will.
- *If I/we can afford to purchase another residence, buying the Real Property under the HDA may not be a suitable investment and I/we should not enter into the HDA to purchase the Real Property.*
- I/we have a right to cancel or rescind the First Loan and/or the Homebuyer Habitat Loan at any time prior to midnight on the third business day after the HDA is signed by sending a notice of my/our decision to rescind or cancel First Loan and/or the Habitat Homebuyer Loan to each of:
 

City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552  
Attention: City Manager

Habitat for Humanity, Riverside, Inc.  
2180 Iowa Avenue  
Riverside, CA 92507  
Attention: Kathy Michalak, Executive Director
- I/we intend to continuously occupy the Real Property for several years and I/we shall not rent or lease the Real Property. I/we understand that the Real Property will

ATTACHMENT NO. 5-2

(Very Low Income)

remain subject to strict limitations on my/our ability to sell, rent or borrow against the Real Property for forty-five years.

- Developer shall not be held responsible for any costs associated with the home I/we purchase with such assistance including, but not limited to, any loan fees or charges, any charges for appraisals, or any escrow costs or other costs relating to the transfer of the Real Property.
- Developer cannot ensure that information provided by or on my/our behalf will be kept confidential.
- Developer shall not be responsible for the selection of a lender providing funds assisting in the purchase of the home, providing information concerning other public or private sources of loans, or the competitiveness of the terms of the Housing Disposition Agreement. I/we assume all responsibility for determining whether I/we will inform myself/ourselves as to the availability and terms of other public or private loans.
- Developer shall not be charged with the knowledge of the contents of the documents of my/our primary lender.
- Developer financial assistance I/we receive under this Program may be considered to be income for purposes of federal or state income taxes and Developer shall not be held responsible for the payment of any taxes which I/we may incur by virtue of the receipt of such financial assistance.

**PARTICIPANT**

**[homebuyer A and homebuyer B]**

Dated: \_\_\_\_\_, 201\_

By: \_\_\_\_\_  
[homebuyer A]

Dated: \_\_\_\_\_, 201\_

By: \_\_\_\_\_  
[homebuyer B]



**ATTACHMENT NO. 6**

**HABITAT HOMEBUYER (JUNIOR) NOTE**

[same as Exhibit I to Homebuyer Loan Agreement]

**Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT**

(Very Low Income)

ATTACHMENT NO. 6-1

**ATTACHMENT NO. 7**  
**HABITAT SECOND TRUST DEED**

[same as Exhibit J to Homebuyer Loan Agreement]

Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT

**ATTACHMENT NO. 8**  
**DEVELOPER SECOND LOAN TRUTH-IN-LENDING DISCLOSURE**

[see Homebuyer Loan Agreement; copy corresponding Disclosure]

**Attachment: Amended and Restated Affordable Housing Agreement (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT**

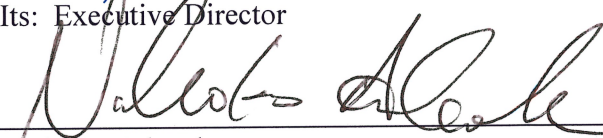
(Very Low Income)

Attachment No. 8-1

**DEVELOPER:**

**HABITAT FOR HUMANITY, RIVERSIDE, INC.,**  
a California nonprofit public benefit corporation

By:   
Kathy Michalak  
Its: Executive Director

By:   
Nicholas Adcock  
Its: Treasurer

**CITY:**

**CITY OF MORENO VALLEY,** a municipal  
corporation

By: \_\_\_\_\_  
City Manager

**AUTHORITY:**

**MORENO VALLEY HOUSING AUTHORITY,** a  
public body, corporate and politic

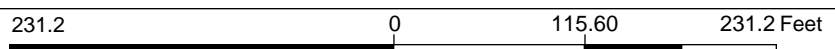
By: \_\_\_\_\_  
Executive Director



# Habitat for Humanity 24265 Myers Avenue



- Legend**
- Public Facilities
    - Public Facilities
    - ★ Fire Stations
  - Parcels
  - ⊞ City Boundary
  - ⊞ Sphere of Influence



WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere

Print Date: 5/7/2015

*DISCLAIMER: The information shown on this map was compiled from the City of Moreno Valley GIS and Riverside County GIS. The land base and facility information on this map is for display purposes only and should not be relied upon without independent verification as to its accuracy. Riverside County and City of Moreno Valley will not be held responsible for any claims, losses or damages resulting from the use of this map.*

**Notes**  
Properties are located on Roberts Way (a new, private street) which is off of Myers Avenue, east of Heacock/ west of Indian

Attachment: Project Site Map (1596 : AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Richard Teichert, Chief Financial Officer

**AGENDA DATE:** September 22, 2015

**TITLE:** CERTIFY RIVERSIDE HOUSING DEVELOPMENT CORPORATION AS A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

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### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council:**

1. Approve Resolution No. 2015-62. A Resolution of the City Council of the City of Moreno Valley, California, Certifying Riverside Housing Development Corporation (RHDC) as a Community Housing Development Organization (CHDO) Eligible to Receive HOME Program Funds for 22889 and 22899 Allies Place.

### **SUMMARY**

This report recommends the certification of Riverside Housing Development Corporation (RHDC) as a Community Housing Development Organization (CHDO) for the purpose of acquiring and rehabilitating two separate, existing, four-unit multifamily rental buildings located at 22889 and 22899 Allies Place in the "horseshoe" neighborhood of Edgemont. The City of Moreno Valley receives an annual allocation of HOME Investment Partnership Act (HOME) funds from the Department of Housing and Urban Development (HUD) to develop affordable housing programs in accordance with the federal regulations. In accordance with HUD requirements, the City of Moreno Valley is required to reserve and commit a minimum of 15% of the annual allocation of its HOME funds to a qualified and certified CHDO.

### **DISCUSSION**

In accordance with HUD guidelines, CHDOs must meet the qualifications and criteria

outlined in the HOME regulations in order to be eligible as recipients of HOME funds, including the following: developer is a non-profit organization formed in accordance with local / state laws; no earnings go to benefit any individual member, founder, or contributor of the organization; the organization is 501(c) exempt; the organizational purpose is the provision of decent housing that is affordable to low-and-moderate income people; developer meets financial accountability standards; demonstrates a capacity to carry out HOME program activities; has a history of serving the community; meets certain organizational structure and membership requirements; and the organization is not a profit seeking entity. In accordance with the CHDO qualification criteria set by HUD, staff has reviewed the documentation submitted by RHDC and has determined that it's satisfactory and meets the requirements.

Riverside Housing Development Corporation (RHDC) is an organization that is committed to improving the quantity and quality of affordable housing opportunities throughout the Inland Empire. RHDC has been working with the City of Moreno Valley since 1999 to acquire and rehabilitate distressed multi-family properties in the area, which are predominantly 4-plex buildings with 1-, 2- and 3-bedroom units. As a result of the successful partnership with City of Moreno Valley, RHDC now owns and manages nine 4-plexes in the Allies & Adrienne neighborhood, for a current total of 36 rental units.

In conjunction with the review for CHDO certification, staff has reviewed two separate project proposals submitted by RHDC to acquire and rehabilitate two 4-unit multifamily rental buildings, located at 22889 and 22899 Allies Place. These properties are located in the "horseshoe" neighborhood in Edgemont, close to Moreno Valley City Hall. The lots and 4-plex buildings are functionally identical to currently owned multi-family properties in the neighborhood, such as the property directly next-door at 22877 Allies Place. They will be renovated and updated to match the high quality of current properties within the neighborhood. Consideration to provide HOME funds for these two separate projects will be presented for City Council consideration under separate items.

## **ALTERNATIVES**

1. Certify Riverside Housing Development Corporation as a Community Housing Development Organization. **Staff recommends this action because it complies with HUD's requirements and would allow for the City to meet the performance goals established for the HOME program.**
2. Decline to certify Riverside Housing Development Corporation as a Community Housing Development Organization. **Staff does not recommend this action because it would result in a failure to meet HUD's requirements and would constrain efforts to meet the performance goals of the HOME program.**

## **FISCAL IMPACT**

The recommended actions will pose **NO FISCAL IMPACT TO THE GENERAL FUND**. Approval of this CHDO certification will enable the City to meet its requirement to

provide funding to certified CHDO's.

**PREPARATION OF STAFF REPORT**

Prepared By:  
Isa Rojas  
Management Analyst

Department Head Approval:  
Richard Teichert  
Chief Financial Officer

Concurred By:  
Marshall Eyerman  
Financial Resources Division Manager

**CITY COUNCIL GOALS**

**Positive Environment.** Create a positive environment for the development of Moreno Valley's future.

**Community Image, Neighborhood Pride and Cleanliness.** Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

**ATTACHMENTS**

- 1. Resolution No. 2015-62
- 2. Completed CHDO Checklist

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/14/15 9:21 AM
City Attorney Approval	<u>✓ Approved</u>	9/15/15 11:47 AM
City Manager Approval	<u>✓ Approved</u>	



## RESOLUTION NO. 2015-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CERTIFYING RIVERSIDE HOUSING DEVELOPMENT CORPORATION (RHDC) AS A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) ELIGIBLE TO RECEIVE HOME PROGRAM FUNDS FOR 22889 AND 22899 ALLIES PLACE

WHEREAS, the City of Moreno Valley desires to provide and support the development of affordable housing opportunities for very low, low-and-moderate income individuals and families residing in the community; and

WHEREAS, the City has entered into an agreement with the United States Department of Housing and Urban Development (HUD) to receive funds through the HOME Investment Partnership Act (HOME) Program, a portion of which must be set aside for designated Community Housing Development Organizations (CHDOs); and

WHEREAS, HUD guidelines and regulations require CHDOs to meet certain criteria and qualifications and to be certified by a participating jurisdiction as a CHDO in order to be eligible to receive HOME Program funds, and

WHEREAS, Riverside Housing Development Corporation is a nonprofit organization that is committed to improving the quantity and quality of affordable housing opportunities to low-and-moderate income individuals and families throughout the Inland Empire; and

WHEREAS, Riverside Housing Development Corporation has submitted the required documentation and evidence to the City to allow certification of its status as a qualified CHDO.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Based upon the staff report and such other evidence presented, the City Council approves the designation and certification of Riverside Housing Development Corporation (RHDC) as a qualified Community Housing Development Organization (CHDO) under the guidelines and regulations of the HOME Program for the purpose of increasing the supply of decent, safe, and affordable housing within the City.

SECTION 2. The City Council authorizes and directs staff to transmit this Resolution and supporting documentation to the United States Department of Housing

and Urban Development as evidence of the certification of Riverside Housing Development Corporation as a CHDO.

SECTION 3. The City Clerk shall certify to the adoption of this Resolution, and it shall be effective immediately upon its adoption.

APPROVED and ADOPTED this 22<sup>nd</sup> day of September, 2015.

\_\_\_\_\_  
Mayor of the City of Moreno Valley

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

2  
Resolution No. 2015-62  
Date Adopted: September 22, 2015

Attachment: Resolution No. 2015-62 [Revision 1] (1631 : CERTIFY RIVERSIDE HOUSING DEVELOPMENT CORPORATION AS A COMMUNITY

**RESOLUTION JURAT**

STATE OF CALIFORNIA )

COUNTY OF RIVERSIDE ) ss.

CITY OF MORENO VALLEY )

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, do hereby certify that Resolution No. 2015-62 was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the 22nd of September 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

\_\_\_\_\_  
CITY CLERK

(SEAL)

Resolution No. 2015-62<sup>3</sup>  
Date Adopted: September 22, 2015

Attachment: Resolution No. 2015-62 [Revision 1] (1631 : CERTIFY RIVERSIDE HOUSING DEVELOPMENT CORPORATION AS A COMMUNITY

## CHDO CHECKLIST

The information contained in this checklist refers to the definition of Community Housing Development Organization (CHDO) in Subpart A, Section 92.2 of the HOME Final Rule.

### I. LEGAL STATUS

A. The nonprofit organization is organized under State or local laws, as evidenced by:

- A Charter, OR**  
 **Articles of Incorporation**

B. No part of its net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by:

- A Charter, OR**  
 **Articles of Incorporation**

C. Has a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c) of the Internal Revenue Code of 1986, as evidenced by:

- A 501(c) Certificate from the IRS.**  
 **A group exemption letter under Section 905 from the IRS that includes the CHDO.**

D. Has among its purposes the provision of decent housing that is affordable to low and moderate-income people, as evidenced by a statement in the organization's:

- Charter,**  
 **Articles of Incorporation**  
 **By-laws, OR**  
 **Resolutions**

### II. CAPACITY

A. Conforms to the financial accountability standards of 24 CFR 84.21, "Standards for Financial Management Systems," as evidenced by:

- A notarized statement by the president or chief financial officer of the organization;**  
 **A certification from a Certified Public Accountant; OR**  
 **A HUD approved audit summary**

B. Has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

**Resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds, OR**

**Contract(s) with consulting firms or individuals who have housing experience similar to projects to be assisted with HOME funds to train appropriate key staff of the organization.**

C. Has a history of serving the community where housing to be assisted with HOME funds will be used, as evidenced by:

**Statement that documents at least one year of experience in serving the community, OR**

**For newly created organizations formed by local churches, service, or community organizations, a statement that documents that its parent organization has at least one year of experience in serving the community.**

**NOTE:** The CHDO or its parent organization must be able to show one year of serving the community from the date the participating jurisdiction provides HOME funds to the organization. In the statement, the organization must describe its history (or its parent organization's history) of serving the community by describing activities which it provided (or its parent organization provided), such as developing new housing, rehabilitating existing stock, and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or childcare facilities. The statement must be signed by the president of the organization or by a HUD-approved representative.

### III. ORGANIZATIONAL STRUCTURE

A. Maintains at least one-third of its governing board's membership for residents of low income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations, as evidenced by the organization's:

**By-Laws,**  
 **Charter, OR**  
 **Articles of Incorporation**

Under the HOME Program, for urban areas, the term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area. For rural areas, "community" is defined as one or several neighborhoods, a town, village, county, or multi-county area (but not the whole state).

B. Provides a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of all HOME-assisted affordable housing projects, as evidenced by:

- The organization's By-laws,
- Resolutions, OR

A written statement of operating procedures approved by the governing body

C. A CHDO may be chartered by a State or local government, however, the State or local government may not appoint: (1) more than one-third of the membership of the organization's governing body; (2) the board members appointed by the State or local government may not, in turn, appoint the remaining two-thirds of the board members; and (3) no more than one-third of the governing board members are public officials, as evidenced by the organization's:

- By-Laws,
- Charter, OR
- Articles of Incorporation

D. If the CHDO is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the CHDO's governing body and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members, as evidenced by the CHDO's:

**Not Applicable**

- By-Laws,
- Charter, OR
- Articles of Incorporation

**IV. RELATIONSHIP WITH FOR-PROFIT ENTITIES**

A. CHDO is not controlled, nor receives directions from individuals or entities seeking profit from the organization, as evidenced by:

- The organization's By-laws, OR
- A Memorandum of Understanding (MOU).

B. A CHDO may be sponsored or created by a for-profit entity, however:

(1) The for-profit entity's primary purpose does not include the development or management of housing, as evidenced by:

\_\_\_\_\_ **The for-profit organization's By-laws; AND**

(2) The CHDO is free to contract for goods and services from vendor(s) of its own choosing, as evidenced by the CHDO's:

\_\_\_\_\_ **By-Laws,**

\_\_\_\_\_ **Charter, OR**

\_\_\_\_\_ **Articles of Incorporation**



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Steve Quintanilla, Interim City Attorney

**AGENDA DATE:** September 22, 2015

**TITLE:** RESOLUTION NO. 2015-63 APPOINTING CITY  
TREASURER

---

### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council:**

1. Take whatever action it deems appropriate.

### **SUMMARY**

California Government Code Section 34856 provides that when the office of the City Treasurer is made appointive, the appointment shall be made by the City Council.

Pursuant to Moreno Valley Municipal Code ("MVMC") Section 2.15.010, the City Treasurer holds such office at the pleasure of the City Council and pursuant to Government Code Section 41007 the Treasurer shall receive such compensation as may be provided by the City Council.

MVMC Section 2.15.030 further provides that the function of the City Treasurer shall be to perform such duties as are prescribed by California Government Code Sections 41000 through 41007, and by any other provisions of law applicable to the deposit, investment and safekeeping of public funds of the City. Specifically, the duties of the Treasurer under the Government Code include the following:

- The Treasurer shall receive and safely keep all money coming into her/his hands as Treasurer.
- The Treasurer shall comply with all laws governing the deposit and securing of public funds and the handling of trust funds in the Treasurer's possession.
- The Treasurer shall pay out money only on warrants signed by legally designated persons.



- Regularly, at least once each month, the Treasurer shall submit to the City Clerk a written report and accounting of all receipts, disbursements, and fund balances and file a copy with the City Council.
- The Treasurer shall perform such duties relative to the collection of City taxes and license fees as are prescribed by ordinance.

In addition, the Treasurer may appoint deputies for whose acts she/he and her/his bondsmen are responsible.

On September 28, 2010, the City Council adopted Resolution No. 2010-86, appointing Richard Teichert as the City Treasurer until such time that such appointment was rescinded or until a new City Treasurer was appointed by City Council. Mr. Teichert's primary appointment is as Chief Financial Officer (leading the Financial and Management Services Department).

In light of the foregoing, if the City Council wants to appoint someone else to serve as the City's Treasurer, it is recommended that the appointment be made by via the adoption of a resolution, similar to the one attached hereto, at a subsequent meeting.

**PREPARATION OF STAFF REPORT**

Prepared By: Steven B. Quintanilla, Interim City Attorney

**CITY COUNCIL GOALS**

None

**ATTACHMENTS**

1. Resolution No. 2015-63\_Appointing City Treasurer

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/16/15 11:22 AM
City Attorney Approval	<u>✓ Approved</u>	9/16/15 11:44 AM
City Manager Approval	<u>✓ Approved</u>	9/16/15 2:12 PM

**RESOLUTION NO. 2015-63**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, APPOINTING \_\_\_\_\_ AS TREASURER OF THE CITY OF MORENO VALLEY**

**WHEREAS**, California Government Code Section 34856 provides that when the office of the City Treasurer is made appointive, the appointment shall be made by the City Council; and

**WHEREAS**, pursuant to Moreno Valley Municipal Code (“MVMC”) Section 2.15.010, the City Treasurer holds such office at the pleasure of the City Council; and

**WHEREAS**, pursuant to Government Code Section 41007 the Treasurer shall receive such compensation as may be provided by the City Council; and

**WHEREAS**, MVMC Section 2.15.030 further provides that the function of the City Treasurer shall be to perform such duties as are prescribed by California Government Code Sections 41000 through 41007, and by any other provisions of law applicable to the deposit, investment and safekeeping of public funds of the City; and

**WHEREAS**, the duties of the Treasurer under the Government Code include: (a) receiving and safely keep all money coming into her/his hands as Treasurer; (b) complying with all laws governing the deposit and securing of public funds and the handling of trust funds in the Treasurer’s possession; (c) paying out money only on warrants signed by legally designated persons; (d) regularly, at least once each month, submitting to the City Clerk a written report and accounting of all receipts, disbursements, and fund balances and filing a copy with the City Council; (e) performing such duties relative to the collection of City taxes and license fees as are prescribed by ordinance; and (f) appointing deputies for whose acts she/he and her/his bondsmen are responsible.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.            Recitals**

That the recitals set forth hereinabove are true and correct.

**Section 2.            Appointment of City Treasurer**

That the City Council hereby appoints \_\_\_\_\_ to serve as City Treasurer, on at will-basis, commencing \_\_\_\_\_, until such time a new City Treasurer is appointed by City Council or the City Treasurer resigns.

**Section 3.                  Duties.**

That the Treasurer shall perform those duties as may be set forth in the Moreno Valley Municipal Code and any applicable local, state or federal laws, rules, regulations and policies, including but not limited to, California Government Code Sections 41000 through 41007, in a competent, professional and satisfactory manner in accordance with the standards and customary, reasonable and prudent practices prevalent in the profession or position for such services.

**Section 4.                  Bonding.**

That an official bond for the Treasurer be filed in an amount deemed sufficient by the City Manager, Chief Financial Officer and Risk Manager with the consent of the City Attorney.

**Section 5.                  Severability.**

That should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

**Section 6.                  Repeal of Conflicting Provisions.**

That all the provisions heretofore adopted by the City Council that are in conflict with the provisions of this Resolution are hereby repealed.

**Section 7.                  Effective Date.**

That this Resolution shall take effect upon its adoption.

**Section 8.                  Certification.**

That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

APPROVED AND ADOPTED this 22<sup>nd</sup> day of September, 2015.

\_\_\_\_\_  
Mayor of the City of Moreno Valley

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

3  
Resolution No. 2015-63  
Date Adopted: September 22, 2015

Attachment: Resolution No. 2015-63\_Appointing City Treasurer [Revision 1] (1673 : RESOLUTION NO. 2015-63 APPOINTING CITY TREASURER)

**RESOLUTION JURAT**

STATE OF CALIFORNIA            )  
COUNTY OF RIVERSIDE        ) ss.  
CITY OF MORENO VALLEY        )

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, do hereby certify that Resolution No. 2015-63 was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the 22<sup>nd</sup> day of September, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

\_\_\_\_\_  
City Clerk

(SEAL)

4  
Resolution No. 2015-63  
Date Adopted: September 22, 2015

Attachment: Resolution No. 2015-63\_Appointing City Treasurer [Revision 1] (1673 : RESOLUTION NO. 2015-63 APPOINTING CITY TREASURER)



## Report to City Council

---

**TO:** Mayor and City Council

**FROM:** Richard Teichert, Chief Financial Officer

**AGENDA DATE:** September 22, 2015

**TITLE:** ENTER INTO AFFORDABLE HOUSING AGREEMENTS WITH RIVERSIDE HOUSING DEVELOPMENT CORPORATION FOR 22899 AND 22889 ALLIES PLACE

---

### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council:**

1. Approve and formalize an Affordable Housing Agreement with Riverside Housing Development Corporation for the acquisition and rehabilitation of 22899 Allies Place for the purposes of creating affordable rental housing.
2. Approve and formalize an Affordable Housing Agreement with Riverside Housing Development Corporation for the acquisition and rehabilitation of 22889 Allies Place for the purposes of creating affordable rental housing.
3. Authorize the City Manager to execute said Agreements on behalf of the City in a form approved by the City Attorney.

### **SUMMARY**

This report recommends the approval of two separate Affordable Housing Agreements (Agreements). One Agreement in the amount, not to exceed, \$629,865 with Riverside Housing Development Corporation for the acquisition and rehabilitation of a 4-unit multifamily rental building located at 22899 Allies Place and a separate agreement in the amount, not to exceed, \$629,865 with Riverside Housing Development Corporation for the acquisition and rehabilitation of a 4-unit multifamily rental building located at 22889 Allies Place. In line with the goals of the HOME program and City's Housing Element, the homes will be rehabilitated and rented as Affordable Rental units to low

income families; ideally Moreno Valley residents. The proposed project will target low income households.

## **DISCUSSION**

The City of Moreno Valley receives an annual allocation of HOME Investment Partnership Act (HOME) funds from the Department of Housing and Urban Development (HUD) to develop affordable housing programs in accordance with the federal regulations. The City currently has an open process allowing interested Community Housing Development Organizations to submit their packages. As a result, Riverside Housing Development Corporation (RHDC) submitted their qualifications and proposals for potential project opportunities.

Riverside Housing Development Corporation is committed to improving the quantity and quality of affordable housing opportunities throughout the Inland Empire. RHDC has been working with the City of Moreno Valley since 1999 to acquire and rehabilitate distressed multi-family properties in the area, which are predominantly 4-plex buildings with 1-, 2- and 3-bedroom units. As a result of the successful partnership with City of Moreno Valley, RHDC now owns and manages nine 4-plexes in the Allies & Adrienne neighborhood, for a current total of 36 rental units. Under a separate item, it is being recommended that the City certify Riverside Housing Development Corporation as a Community Housing Development Organization (CHDO). In accordance with HUD requirements, the City of Moreno Valley is required to reserve and commit a minimum of 15% of the annual allocation of its HOME funds to a qualified and certified CHDO.

Staff has reviewed the proposals submitted by RHDC for both 22899 and 22889 Allies Place, including schedule and costs, and believes these two separate and distinct projects would both be a great benefit to the City through revitalization of substandard properties and the production of affordable housing units. As part of the project, the City will provide funds to RHDC to acquire and rehabilitate the separate properties. The properties will both be extensively rehabilitated from their current substandard conditions to updated, safe, and energy-efficient units. Both separate projects involve complete rehabilitation of the kitchens and bathrooms, including new cabinetry and countertops; new drywall and texture throughout, including firewall as required; new highly efficient 16 SEER HVAC installation and ducting; new stucco on the exterior; and exterior landscaping, as well as additional aspects further detailed on the project's separate scopes of work. The buildings will be re-trussed from flat roof to new pitched roofs, which will match the multi-family rental properties within the neighborhood. Likewise, the properties will also be upgraded with the addition of adjacent individual parking garages for each unit, to provide safe covered parking for residents. Both properties are currently vacant; relocation related activities and expenses will not be necessary.

Staff is requesting that the City Council consider two separate items 1) approval of the Agreement in the amount not to exceed \$629,865, with Riverside Housing Development Corporation for 22899 Allies Place and 2) approval of the Agreement in the amount not

to exceed \$629,865, with Riverside Housing Development Corporation for 22889 Allies Place.

## **ALTERNATIVES**

1. Approve the Agreement with Riverside Housing Development Corporation for the acquisition and rehabilitation of the property at 22899 Allies Place; the Agreement with Riverside Housing Development Corporation for the acquisition and rehabilitation of the property at 22889 Allies Place; and authorize the City Manager to execute said Agreements on behalf of the City in a form approved by the City Attorney. **Staff recommends this action because it complies with HUD's requirements which allows for the City to better meet the performance goals established for the HOME grant by creating affordable housing.**
2. Reject the Agreements with Riverside Housing Development Corporation for the acquisition and rehabilitation of the property at 22899 Allies Place and for the acquisition and rehabilitation of the property at 22889 Allies Place. **Staff does not recommend this action because it would result in a failure to meet HUD's requirements and would constrain efforts to meet the performance goals of the HOME grant.**

## **FISCAL IMPACT**

The recommended actions will pose **NO FISCAL IMPACT TO THE GENERAL FUND**. The acquisition and rehabilitation of each separate project will be funded with a combination of HOME entitlement and CHDO funds in the amount not to exceed \$629,865, per project. Per federal law, these funds are to be used solely for designated activities.

## **NOTIFICATION**

Notice of this meeting was published on the City website for public review and comment. Respondents were given the opportunity to provide comments via email, telephone, and mail.

## **PREPARATION OF STAFF REPORT**

Prepared By:  
Isa Rojas  
Management Analyst

Department Head Approval:  
Richard Teichert  
Chief Financial Officer

Concurred By:  
Marshall Eyerman  
Financial Resources Division Manager

## **CITY COUNCIL GOALS**



**Positive Environment.** Create a positive environment for the development of Moreno Valley's future.

**Community Image, Neighborhood Pride and Cleanliness.** Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

**ATTACHMENTS**

- 1. Affordable Housing Agreement, HOME, 22899 Allies Place
- 2. Affordable Housing Agreement, HOME, 22889 Allies Place

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/16/15 2:14 PM
City Attorney Approval	<u>✓ Approved</u>	9/16/15 2:29 PM
City Manager Approval	<u>✓ Approved</u>	9/16/15 5:56 PM

**AFFORDABLE HOUSING AGREEMENT**

**by and between the**

**CITY OF MORENO VALLEY**

**and**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a  
California nonprofit public benefit corporation**

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## AFFORDABLE HOUSING AGREEMENT

**THIS AFFORDABLE HOUSING AGREEMENT** (the “Agreement” or the “AHA”), dated, for identification purposes only, as of September 22, 2015, is entered into by and between the **CITY OF MORENO VALLEY**, a municipal corporation (the “City”), and **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation (the “Participant”).

### RECITALS

**A.** City is the recipient of moneys from the federal government pursuant to the HOME Investment Partnerships Program (“HOME” or “HOME Program”) from the United States Department of Housing and Urban Development (“HUD”).

**B.** City has determined to make certain moneys allocated to it under the HOME Program (“HOME Moneys”) available to Participant pursuant to this Agreement, including the HOME Regulations and all provisions hereof.

**C.** Participant has acquired from a private party (“Prior Owner”) of one four (4)-unit apartment building located at 22899 Allies Place in the City of Moreno Valley (the “Site”), as more particularly described in the Map (Attachment No. 1) and the Legal Description of the Site (Attachment No. 2.).

**D.** Under this Agreement, City will acquire the Site provided that Participant executes and delivers to City those promissory notes, deeds of trusts, covenants and regulatory agreements as more particularly set forth herein. Participant shall thereupon acquire or reacquire an interest in the Site and shall thereupon renovate and rehabilitate the existing four (4) dwelling units on the Site, whereupon the Participant shall rent each of such four (4) dwelling units to “Very Low Income Households” or “Low Income Households” at “Affordable Rent” as those terms are defined below all as more particularly provided below. Such development is intended to implement the City’s affordable housing goals.

**E.** Participant is experienced in the construction, development, renovation, rehabilitation, operation and management of high quality housing which is affordable to persons and families of Low to Moderate Income, including Very Low Income Households and Low Income Households in Southern California.

**F.** All of the units at the Site shall be rented at “Affordable Rent” throughout the “Required Covenant Period” (as defined below). All of the undertakings of the Participant to rent the four (4) Units at the Site at Affordable Rent for Very Low Income Households and Low Income Households are material to this Agreement and but for those undertakings by the Participant and the City would not have entered into this Agreement.

**G.** Under this Agreement, the Participant shall execute and deliver to City three (3) promissory notes. The Participant’s obligation to pay shall be evidenced by the “Senior Note,” the “Equity Share Note” and the “Capital Recovery Note” as defined below. In view of the large commitment of revenues of the City (consisting of revenues under the HOME Program) under this Agreement, and to promote the continued availability of the dwelling units on the Site as rental units

which shall remain available at “Affordable Rent” throughout the “Required Covenant Period” (as those capitalized terms are defined below), the Agreement provides for the City to receive funds in the form of recovery of its capital and as equity sharing, as more particularly provided herein.

**H.** This Agreement is in the vital and best interest of the City of Moreno Valley, California, and the health, safety and welfare of its residents.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

**1.1 Defined Terms.** As used in this Agreement (and in all other Development Documents, unless otherwise defined), the following capitalized terms shall have the following meanings:

“**Affordable Rent**” means an amount equal to the maximum amount of out of pocket housing cost to be charged monthly by Participant and paid by each of the eligible Very Low and Low Income Households for each of the Housing Units at the Project as determined and calculated pursuant to the affordable rent and the rent limitations as determined and published from time to time by TCAC or, if lower, rents restricted to those complying with the HOME Requirements; in the event TCAC ceases to function or to determine affordable rents, then such affordable rents shall be determined by the City Manager, acting on behalf of the City, in a manner substantially consistent with the method under which affordable rents were determined by TCAC. For purposes of Affordable Rent, the monthly housing payment means the total of monthly payments by each tenant household (inclusive of any and all payments attributable to Section 8 housing assistance, other rental subsidies, or other public subsidies, if any) of a Housing Unit for use and occupancy of a Housing Unit and facilities associated therewith, including a reasonable allowance for utilities for an adequate level of service.

“**Area**” means the Riverside-San Bernardino Metropolitan Statistical Area, as periodically defined by HUD.

“**Audited Financial Statement**” means an audited financial statement, including without limitation a profit and loss statement, generated by a third party certified public accountant acceptable to the City in its reasonable discretion, showing, for the previous Year, on a monthly basis and in an easily readable format, Gross Revenues, Operating Expenses, Debt Service, Operating Reserve, Capital Replacement Reserve and Residual Receipts. Depreciation and non-cash items shall not be included.

“**Base Participant Policy**” is defined in Section 2.4 hereof.

“**Building Permit**” means the building permit(s) issued by the City and required for the Improvements.

“**CC&Rs**” means Attachment No. 9 to this Agreement.

“**Calculation of Affordable Rents**” means Attachment No. 5 to this Agreement.

“**Capital Recovery Deed of Trust**” means Attachment No. 16 to this Agreement.

“**Capital Recovery Note**” means Attachment No. 15 to this Agreement.

“**Capital Replacement Reserve**” means a reserve fund to be established by the Participant as a capital reserve in the amount of One Thousand Dollars (\$1,000.00) per Year (for the first Year), which shall remain fixed for the first five Years and then shall increase by fifty dollars (\$50.00) per unit annually, to a maximum of Five Hundred Dollars (\$500.00) per unit annually. The Capital Replacement Reserve is more fully described in Section 3.3 of this Agreement.

“**Certificate of Continuing Program Compliance**” means the Certificate to be filed by the Participant with the City, which Certificate shall be substantially in the form attached hereto as Attachment No. 4.

“**Chargeable Fees**” means each of the following, within the respective parameters therefor set forth in this Agreement: (i) the Capital Replacement Reserve; and (ii) the Operating Reserve.

“**City**” means the City of Moreno Valley, California, a California municipal corporation.

“**City Deed**” means Attachment No. 18 to this Agreement.

“**City Disbursement Amount**” means the sum of Six Hundred Twenty Nine Thousand Eight Hundred Sixty Five Dollars (\$629,865.00), all of which will be funded using HOME Moneys. Two hundred sixty three thousand (\$263,000) will be used for the acquisition of the site and the remaining funds will be used for other activities, including rehabilitation. The manner in which the City Disbursement Amount is allocated among the loans to be evidenced by the Senior Note, the Equity Share Note and the Capital Recovery Note is subject to modification upon mutual agreement of Participant and City; provided that in no event shall the aggregate amount disbursed as the City Disbursement Amount exceed the sum of Six Hundred Twenty Nine Thousand Eight Hundred Sixty Five Dollars.

“**City Escrow**” is described in Section 2.2 hereof.

“**City Manager**” means the City Manager of the City or his designee.

“**City’s Title Policies**” is defined in Section 2.4 hereof.

“**Closing**” means the recording of the Recordable Documents.

“**Closing Deadline**” means February 26, 2016, or such later date as may be mutually agreed to in writing by the City and the Participant.

“**Condition of Title**” is defined in Section 2.3 hereof.

“**Conditions Precedent to Closing**” is set forth in Section 3.1 hereof.

“**Conditions Precedent to Disbursement**” are set forth in Section 3.2 hereof.

“**Construction**” means construction, reconstruction or renovation.

“**County**” means the County of Riverside, California.



“**Date of Agreement**” means September 22, 2015.

“**Debt Service**” means required debt service payments under the Senior Note and the Second Note, including the funding obligations in respect of all reserves or escrows required thereunder.

“**Default**” is defined in Section 7.1 hereof.

“**Development**” means the new apartment complex and associated improvements as required by this Agreement to be: (i) rehabilitated or reconstructed by the Participant upon the Site, with related improvements, all as more particularly described in the Scope of Work: Budget, and (ii) operated in conformity with the CC&Rs.

“**Development Documents**” means, collectively, this Agreement, the CC&Rs, all other Attachments to this Agreement, and any other agreement, document, or instrument that the City requires in connection with the execution of this Agreement or from time to time to effectuate the purposes of this Agreement.

“**Equity Share Deed of Trust**” means Attachment No. 12 to this Agreement.

“**Equity Share Note**” means Attachment No. 11 to this Agreement.

“**Escrow Holder**” means the holder of the Escrow for the conveyance of the Site by the City to the Participant and the recordation of the CC&Rs, which shall be Ticor Title Company of California or another escrow holder mutually acceptable to the City and the Participant.

“**Event of Default**” has the meaning set forth in Section 7.1 hereof.

“**Form of Residual Receipts Report**” means Attachment No. 19 to this Agreement.

“**General Contractor**” means the general contractor to be hired by Participant to engage and supervise the subcontractors in the performance and completion of the construction of the Development and all other on-site and off-site improvements required to be constructed in connection with the Development, all in accordance with the Scope of Work: Budget and any revised Scope of Work: Budget. The General Contractor shall be reasonably acceptable to and approved by the City Manager, in his reasonable discretion; provided, the Participant is hereby pre-approved to act as the General Contractor for the development of the Development. The parties acknowledge that the General Contractor will not be performing actual construction work for any portion of the Development, but instead shall hire Subcontractors (after competitive bidding) who shall be reasonably approved by the City Manager.

“**Governmental Regulations**” means all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, *et seq.*; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), Section 3, 42 U.S.C. Section 9601, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.*; the Safe

Drinking Water Act, as amended, 42 U.S.C. Section 300f *et seq.*; all comparable state and local laws, laws of other jurisdictions or orders and regulations; and all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Participant or the Site.

“**Gross Revenues**” means the total rental income and all other revenues or income received by the Participant or its successors or assigns in connection with the Development, including without limitation Housing Rent, laundry charges, payments in connection with Section 8 certificates (including any payments under such certificates that are in excess of the restricted rents provided for hereunder), cable income, and interest earnings, but, except for any interest earned thereon, does not include (i) refinancing proceeds (provided the refinancing is permitted by and is accomplished in accordance with this Agreement, including without limitation the making of disbursements to the City provided for under the Equity Share Note in connection with refinancings) or (ii) insurance proceeds which are used to repair or reconstruct the Development or condemnation proceeds).

“**Hazardous Material**” or “**Hazardous Materials**” means and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls, (ix) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903); (xi) Methyl tert Butyl Ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, *et seq.*, specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities below attainment levels identified in one or more of the enactments identified above as Governmental Requirements, including those product and amounts as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a

significant population living within the Development, including without limitation alcohol, aspirin, tobacco and saccharine.

“**Hazardous Materials Contamination**” means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in, or under the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Agreement) emanating from the Site.

“**HOME Regulations**” means those regulations set forth at 24 C.F.R., Part 92, as such regulations may be revised from time to time. A copy of the HOME Regulations will be kept on file with the City as a public record. The HOME Regulations shall, for purposes of this Agreement (including without limitation the attachments hereto) be deemed to include Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, as amended.

“**Housing Rent**” means the total of monthly payments by the tenants of a Unit for (a) use and occupancy for the Unit and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Participant which are required of all tenants of the Units, other than security deposits, (c) a reasonable allowance for utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity and gas, as determined by regulation of Housing Authority of the County of Riverside pursuant to 24 C.F.R. Section 5.600 *et seq.* and (d) possessory interest, taxes or other fees or charges assessed for the use of the Units and facilities associated therewith by a public or private entity other than the Participant.

“**HOME Requirements**” means limitations on household income and/or household size as established by the HOME Regulations.

“**HUD**” means the United States Department of Housing and Urban Development.

“**Improvements**” or “**Project**” means all of the improvements described in the Scope of Work: Budget.

“**Income Verification**” means Attachment No. 10 to this Agreement.

“**Legal Description of the Site**” means Attachment No. 2 to this Agreement.

“**Lender’s Title Policy**” is defined in Section 2.4 hereof.

“**Low Income Households**” or “**Lower Income Households**” means households earning not greater than eighty percent (80%) of Median Income for the Area pursuant to Health and Safety Code Section 50079.5.

“**Median Income**” means Median Income for the Area (namely, Riverside County), as set forth by regulation of the California Department of Housing and Community Development pursuant to Health and Safety Code Sections 50079.5 and 50105.

“**Notice**” means a notice in the form prescribed by Section 8.2 of this Agreement.

**“Operating Expenses”** means actual, reasonable and customary costs, fees and expenses directly incurred and for which payment has been made and which are attributable to the operation, maintenance, and management of the Development, excluding the Capital Replacement Reserve and consisting of only the following (and such additional items, if any, as to which the prior written approval of the City Manager is first obtained. Such approval shall be granted, granted subject to conditions, or refused at the sole and absolute discretion of the City Manager): painting, cleaning, repairs and alterations; landscaping; utilities; rubbish removal; sewer charges; costs incurred to third parties in connection with generating laundry charges (but in no event to exceed the laundry charges); real and personal property taxes and assessments; insurance premiums; security; advertising, promotion and publicity; office, janitorial, cleaning and building supplies; the actual and customary salary payable to an on-site manager which directly and exclusively benefits residents of the Development; the actual and customary salary of one assistant manager, one on-site maintenance manager and such other personnel, if any, as incurred for the hiring of unrelated third parties for on-site management, which directly and exclusively benefit residents of the Development, subject to the prior written approval of the City Manager at his sole and absolute discretion; a management fee (“Management Fee”) of not to exceed Six Hundred Twenty-Five Dollars (\$625.00) per Year (as adjusted annually by the City Manager as of January 1st of each year based upon the consumer price index applicable to Riverside County) per Qualifying Rental (per Year); purchase, repairs, servicing and installation of appliances, equipment, fixtures and furnishings; reasonable and customary fees and expenses of accountants, attorneys, consultants and other professionals as incurred commencing after the completion of the Improvements (as evidenced by the issuance by City of a certificate of occupancy for the corresponding building developed as part of the Improvements) in connection with the operation of the Development; tenant improvements that are not included in the costs of the Improvements, and payments made by the Participant to satisfy indemnity obligations and other payments by the Participant pursuant to this AHA other than to the Participant, the Participant’s partners or other related persons; provided, however, that payments to parties related to Participant for Operating Expenses must not exceed market rates. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation. The Operating Expenses shall be reported in the Audited Financial Statement and shall be broken out in line item detail.

**“Original Price”** means the sum of One Hundred Eighty Nine Thousand Fifty Dollars (\$263,000.00) (exclusive of closing costs).

**“Participant”** means Riverside Housing Development Corporation, a California nonprofit public benefit corporation.

**“Participant Pro Forma”** means Attachment No. 17 to this Agreement.

**“Principals”** means Bruce Kulpa.

**“Prior Owner”** means \_\_\_\_\_ (the entity from which Participant acquired the Site or proposes to have the Site acquired for the Original Price).

**“Purchase Price”** is defined in the Equity Share Note.

**“Qualifying Rentals”** means Units operated in strict conformity with all provisions of this Agreement (including the Attachments hereto).

“**Recordable Documents**” means the following: (i) the City Deed; (ii) the CC&Rs; (iii) the Resale Restriction Agreement; (iv) the Senior Deed of Trust; (v) the Capital Recovery Deed of Trust; and (vi) such other instruments, if any, as shall be approved by the City Manager (upon consultation with City’s legal counsel) as necessary or convenient to effectuate and implement the initial financing of the Improvements (and the permanent financing thereof).

“**Redevelopment Plan**” is defined in Section 1.5 hereof.

“**Related Entity**” means a Principal or an entity in which any interest is held by the Participant or one or more of the Principals.

“**Reporting Amount(s)**” means the sum of Two Hundred Fifty Hundred Dollars (\$250.00) per unit per year for each dwelling unit as to which the Participant fails to deliver to City, during any Year, a full and adequate report that conforms to Section 33418 of the California Health and Safety Code.

“**Required Affordable Units**” means all four (4) of the dwelling units on the Site.

“**Required Covenant Period**” means a period of fifty-six (56) years, as more particularly set forth in the CC&Rs.

“**Resale Restriction Agreement**” means Attachment No. 13 to this Agreement.

“**Residual Receipts**” for a particular Year means Gross Revenues for the corresponding Year less (i) Debt Service payments made during such Year, and (ii) the sum of Operating Expenses and, to the extent funded and within the parameters as set forth in this Agreement therefor, Chargeable Fees made during the corresponding Year. All calculations of Residual Receipts shall be made annually, on or before March 15 for the preceding Year, on a cash (and not accrual) basis and the components thereof shall be subject to verification and approval, on an annual basis, based upon conformity with the terms of the this Agreement, by the City. The calculation of Residual Receipts is to facilitate the tracking by City of performance by the Participant under this Agreement; payments under the promissory notes hereunder shall be due and payable without regard to the availability of Residual Receipts.

“**Rules and Regulations**” means each of: (i) Health and Safety Code Sections 50052.5, 50053 and 50105; (ii) the Davis-Bacon Act (40 U.S.C. 3141 et seq.); (iii) Community Development Block Grant (CDBG) program as authorized under the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq. (“HCD Act”) and the regulations promulgated thereunder at 24 C.F.R. 570; (iv) the Community Development Block Grant (CDBG) program as authorized under the Public Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq. (“HCD Act”) as amplified by regulations set forth at 24 C.F.R. 570; (v) the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 C.F.R. Part 58; (vi) the Flood Disaster Protection Act of 1973 (P.L. 93-2234) for compliance in regard to the sale, lease, or other transfer of land acquired, cleared or improved under the terms of this Agreement; (vii) the Clean Air Act, as amended (42 U.S.C. 1857, et seq.); (viii) the Water Pollution Control Act, as amended, 33 U.S.C. 1251, et. seq., as amended 1318 relating to the inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; (ix) the Environmental Protection Agency Regulations pursuant to 40 C.F.R., Part 50, as amended; (x) Labor Standards (29 CFR Parts 3.5 and



5a) pertaining to contracts and applicable requirements of the regulations of the Division of Labor; (xx) the Drug Free Workplace Act of 1988; (xi) Public Law 101-144, Section 519 (the 1990 HUD Appropriation Act); (xii) the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470); (xiii) federal regulations requiring that minority and women's businesses be afforded opportunities to participate in the performance of this Agreement; (xiv) as to conflicts of interest: (a) Participant agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following: (1) Participant shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds; (2) no employee, officer or agent of Participant shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved; (3) no covered persons who exercise or have exercised any functions or responsibilities with respect to HOME-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or with respect to the proceeds from the HOME-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of City, Participant, or any designated public agency; (xv) Participant shall comply with federal regulations concerning lobbying; (xvi) 42 U.S.C. Section 5309 (nondiscrimination); and (xvii) to the extent applicable, including a Section 3 Clause in each construction contract.

**"Schedule of Performance"** means Attachment No. 3 to this Agreement. The Schedule of Performance sets forth the dates by which City and Participant are to perform certain obligations under this Agreement.

**"Scope of Work: Budget"** means Attachment No. 7 to this Agreement.

**"Section 3"** means Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. Section 1701u, as amended, and the implementing regulations.

**"Section 3 Clause"** means and refers to the clause required to be included in contracts for work subject to Section 3. City may, at its option, prepare a Section 3 "checklist" and other forms related to Section 3 compliance; and as may be provided by City to Participant, and its contractor(s) or subcontractor(s), if any, and as applicable, such forms shall be utilized in all contracts and subcontracts to which Section 3 applies. For purposes of this Section 3 Clause and compliance thereto, whenever the word "contractor" is used it shall mean and include, as applicable, Participant, and its contractor and subcontractor(s), if any. The particular text to be utilized in any and all contracts of any contractor doing work covered by Section 3 shall be in substantially the form of the following, as reasonably determined by City or as directed by HUD or its representative, and shall be executed by the applicable contractor under penalty of perjury:

"(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons [inclusive of

Lower Income Households served by the Project], particularly persons who are recipients of HUD assistance for housing.

(ii) The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of notices in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(v) The contractor will certify that any vacant employment positions, including training positions, that are filled (a) after the contractor is selected but before the contract is executed, and (b) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR part 135.

(vi) Noncompliance with HUD’s regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(vii) With respect to work performed in connection with Section 3 covered Indian Housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible, (a) preference and opportunities for training and employment shall be given to Indians, and (b) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).”

After the foregoing Section 3 Clause, add signature block of Contractor, Subcontractor, or other contractors and subcontractors, as applicable, and add the following text immediately above the signature block: “The contractor/provider by this his/her signature affixed hereto declares under penalty of perjury that contractor has read the requirements of this Section 3

Clause and accepts all its requirements contained therein for all of his/her operations related to this contract.”

To the extent applicable, Participant shall comply and/or cause compliance with Section 3 Clause requirements for the Project. For example, when and if Participant or its contractor(s) hire(s) full time employees, rather than volunteer labor or materials Section 3 is applicable and all disclosure and reporting requirements apply.

“**Senior Loan**” means a loan by the City in the original principal amount of One Hundred Seventy-Seven Thousand Dollars (\$177,000.00) as evidenced by the Senior Note.

“**Senior Deed of Trust**” means a deed of trust in the form of Attachment No. 14 to this Agreement.

“**Senior Note**” means a promissory note in the form of Attachment No. 6 to this Agreement.

“**Site**” means that real property depicted on the Site Map and described with greater particularity by the Legal Description of the Site.

“**Site Disposition**” means the conveyance of the Site to the Participant by the City Deed.

“**Site Map**” means Attachment No. 1 to this Agreement.

“**Stabilized Occupancy**” means occupancy of all four (4) of the Units for three (3) consecutive months.

“**Subcontractor**” and “**Subcontractors**” means, individually and collectively, one or more subcontractors hired by Participant’s General Contractor for the Development to perform and complete, or to engage and supervise others to perform and complete, the construction of the Development and all other on-site and off-site improvements required to be constructed in connection with the Development, all of which shall be in accordance with the Scope of Work: Budget. Each of the Subcontractors shall be selected after competitive bidding, and City shall have every reasonable right and opportunity to observe and review all material stages of such competitive bidding process, including a right to review the invitation to bidders, each bid package, each responsive bid form, each submitted bid package and the right to be present when each bid is opened by Participant and/or the General Contractor. Participant shall submit to City information regarding the entity serving as the Subcontractor for any portion of the construction of the Development and all other on-site and off-site improvements required to be constructed in connection therewith in accordance with the Scope of Work: Budget, including compliance with plans approved by City and the obtaining by Participant of all required licenses, certifications, insurance, etc., as reasonably requested by the City Manager.

“**TCAC**” means the California Tax Credit Allocation Committee, the allocating agency for Tax Credits in California.

“**Tax Credits**” means federal 9% Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, et seq.



“**Title Company**” shall be Ticor Title Company of California or another title insurer mutually acceptable to the City and the Participant.

“**Transfer**” means the transfer of the Site or any interest thereon by Participant, but excluding therefrom the rental of individual units to Low Income Households at Affordable Rent in strict conformity with this Agreement.

“**Unit**” means each of the four (4) dwelling units required to be renovated by the Participant under this Agreement.

“**Very Low Income Households**” means households earning not greater than fifty percent (50%) of Median Income for the Area pursuant to Health and Safety Code Section 50105.

“**Year**” means the period commencing as of the Date of Agreement and ending as of December 31 of that calendar year, then each succeeding calendar year thereafter during the Required Covenant Period.

**1.2 Singular and Plural Terms.** Any defined term used in the plural in this Agreement or any Development Document shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

**1.3 References and Other Terms.** Any reference to this Agreement or any Development Document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation.”

**1.4 Exhibits Incorporated.** All attachments and exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

**1.5 The Redevelopment Plan.** The Redevelopment Plan for the Moreno Valley Redevelopment Project (the “Redevelopment Project”) was adopted on December 29, 1987 by Ordinance No. 87-154 (the “Redevelopment Plan”). The project area of the Redevelopment Project is referred to herein as the “Project Area”. The Participant has reviewed the Redevelopment Plan and agrees to perform under this Agreement in conformity with the Agreement and, to the extent the Redevelopment Plan is applicable following the dissolution of the Community Redevelopment Agency of the City of Moreno Valley which occurred on February 1, 2012, the Redevelopment Plan.

**1.6 Representations and Warranties.**

**1.6.1 Participant Representations.** Participant represents and warrants to each of the City as follows:

(a) **Authority.** Participant is a duly organized limited non-profit corporation organized within and in good standing under the laws of the State of California. Participant has full right, power and lawful authority to lease and accept title to and possession of the Site and undertake

all obligations as provided herein and the execution, performance and delivery of this Agreement by Participant has been fully authorized by all requisite actions on the part of the Participant. The parties who have executed this Agreement on behalf of Participant are authorized to bind Participant by their signatures hereto.

(b) **Litigation.** To the best of Participant's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Participant, at law or in equity before any court or governmental agency, domestic or foreign.

(c) **No Conflict.** Participant's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Participant is a party or by which it is bound.

(d) **No Participant Bankruptcy.** Participant is not the subject of a bankruptcy proceeding.

(e) **Participant Experience; Sophisticated Party.** The Principals of Participant are sophisticated parties, with substantial experience in the acquisition, rehabilitation, development, financing, obtaining financing for, marketing, and operation of affordable housing projects, including rental projects, and with the negotiation, review, and preparation of agreements and other documents in connection with such activities. The Participant is familiar with and has reviewed all laws and regulations pertaining to the development and operation of the Development (including without limitation the Rules and Regulations), and has obtained advice from any advisers of its own choosing in connection with this Agreement.

(f) **Participant Status as CHODO.** Participant is a community housing development organization (or "CHODO") within the meaning of § 92.2 of the HOME Regulations.

(g) **Due Authorization and Execution; Studies Completed.** Participant has duly authorized the execution of this Agreement, the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Equity Share Note and the Equity Share Deed of Trust. Participant is ready, willing and able to execute the CC&Rs, the Resale Restriction Agreement, the Equity Share Note, the Equity Share Deed of Trust, the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust and all documents necessary to effectuate the Development. Concurrently with the execution of this Agreement by City or within three (3) calendar days thereafter, Participant shall execute and deposit with the City or the Escrow Holder (to be held pending satisfaction of the Conditions Precedent to Disbursement as set forth in Section 3.1 hereunder) the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Equity Share Note, the Capital Recovery Note, the Equity Share Deed of Trust, the Senior Deed of Trust, the Capital Recovery Deed of Trust and all documents necessary to effectuate the renovation of the Site and the operation of the affordable rental units hereunder in conformity with this Agreement.

**1.6.2 City Representations.** City represents and warrants to Participant as follows:

(a) **Authority.** City is a municipal corporation, which has been authorized to transact business pursuant to action of the City. City has full right, power and lawful authority to execute, perform under and deliver this Agreement, and the execution of this Agreement by City has

been fully authorized by all requisite actions on the part of City. The parties who have executed this Agreement on behalf of City are authorized to bind City by their signatures hereto.

(b) **No Conflict.** To the best of City's knowledge, City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(c) **No City Bankruptcy.** City is not the subject of a bankruptcy proceeding.

## 2. ACQUISITION; LOANS; SITE

**2.1 Acquisition of Site.** The Participant originally negotiated with the Prior Owner for the acquisition of the Site and subsequently acquired or assigned to the City its rights to acquire the Site. The Participant has proposed that the Site be conveyed to the Participant in accordance with the terms of this Agreement. The conveyance of the Site to the Participant shall be concurrent with the recording of the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust and the Capital Recovery Third Deed of Trust unless otherwise agreed by City. The recordation of those instruments is to be accomplished as set forth in Sections 2.1 to 2.5 hereof.

**2.1.1 Site Due Diligence.** Based upon its review as undertaken prior to the Date of Agreement, the Participant believes that the Site is suitable for the development and use provided under this Agreement.

**2.1.2 City Disbursements; Participant Payments.** In connection with this Agreement, particularly in connection with the acquisition of the Site as accomplished by City and funding of the Improvements (subject to the satisfaction of the Conditions Precedent to Disbursement), it is contemplated that the City will disburse the remainder of the City Disbursement Amount (in addition to that portion of the City Disbursement Amount used for the acquisition of the Site and related activities, namely \$263,000.00). Excepting for the portion of the City Disbursement Amount already disbursed in connection with the acquisition of the Site by the City and associated activities, the City Disbursement Amount is to be disbursed as construction drawdowns, as more particularly set forth in Section 4.4.1 of this Agreement.

Thereafter, following the Closing, the Participant shall make all payments to the City as required under the Senior Note, the Equity Share Note and the Capital Recovery Note.

**2.2 Escrow.** The parties shall open an escrow (the "City Escrow") with the Escrow Holder, by the time established therefor in the Schedule of Performance for the Closing, and the recordation and delivery of documents described in Section 2.1. The City and the Participant agree to execute such escrow instructions as may be reasonably required to implement this Section 2.2.

Payment of the purchase price for the Site by the Participant to the City is to be accomplished outside escrow and is a matter with which Escrow Holder need not be concerned.

**2.2.1 Costs of Escrow.** The Participant shall pay for all costs and expenses in connection with the conveyance of the Site by City to Participant (excepting only for that portion of escrow fees and title insurance premiums to be borne by the City as set forth Section 2.4 hereof).

**2.2.2 Escrow Instructions.** This Agreement constitutes the joint escrow instructions of the Participant, the City, and the Escrow Holder to whom these instructions are

delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close this Escrow in the shortest time reasonably practicable. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account. The City designates the City Manager to act on its behalf in connection with the City Escrow.

The parties agree to execute supplemental escrow instructions consistent with the terms of this Agreement and such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. Escrow Holder is instructed to release City's escrow closing and The Participant's escrow closing statements to the respective parties.

**2.2.3 Authority of Escrow Holder.** Escrow Holder is authorized to, and shall:

(a) Pay and charge the City for the premium for the Base Participant Policy and the premium for the City's Title Policies as set forth in Section 2.4.

(b) Pay and charge the Participant and City for their respective shares of any escrow fees, charges, and costs payable under Section 2.4 of this Agreement.

(c) Disburse funds, record and deliver the Recordable Documents in the order prescribed in Section 2.2.6 hereof.

(d) Do such other actions as necessary to fulfill its obligations under this Agreement.

(e) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

**2.2.4 Closing.** The recording of the Recordable Documents hereunder (the "Closing") is to be accomplished within thirty (30) days of the parties' satisfaction of all of Conditions Precedent to Closing, but in no event later than the last day established therefor in the Schedule of Performance. As part of the Closing, each of the Senior Note, the Capital Recovery Note and the Equity Share Note shall be executed and held by Escrow Holder for delivery to City and all of the City Deed, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Second Deed of Trust the Capital Recovery Deed of Trust, and the Equity Share Deed of Trust shall have been recorded by the Riverside County Recorder. The "Closing Date" means the day on which the Closing occurs.

**2.2.5 Termination.** If Escrow is not in condition to close by the time established therefor in the Schedule of Performance, then the party which has fully performed under this Agreement may, in writing, demand the return of money or property and terminate this Agreement. If a party makes a written demand for return of documents or properties, this Agreement shall not terminate until five (5) days after Escrow Holder shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Holder is authorized to hold all papers and documents until

instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of this Agreement shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Holder shall proceed with the Closing as soon as possible. At the election of the City, default by the Participant under this Agreement shall constitute a default under this Agreement.

**2.2.6 Closing Procedure.** Escrow Holder shall close Escrow for the Transfer as follows:

Record the following documents in this order: (i) the City Deed (unless waived by City); (ii) the CC&Rs; (iii) the Resale Restriction Agreement; (iv) the Senior Deed of Trust; (v) the Equity Share Deed of Trust; (vi) the Capital Recovery Deed of Trust; (vii) such other instruments, if any, as shall be approved by the City Manager (upon consultation with City's legal counsel) as necessary or convenient to effectuate and implement the financing of the acquisition of the Site and the renovation of the Improvements, with instructions for the Recorder of Riverside County, California to deliver: (i) to the City, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Capital Recovery Deed of Trust and the Equity Share Deed of Trust; (ii) deliver a certified copy of each of the foregoing to the Participant and the original City Deed to the Participant (unless recording of the City Deed is waived by City on the basis that Participant holds title to the Site). The Escrow Holder shall also deliver to City each of the Senior Note, the Capital Recovery Note and the Equity Share Note, a certified copy of the City Deed and each of the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust and the Capital Recovery Deed of Trust (and, until the originals of such recorded instruments are available, a conformed copy of each) and shall:

- (a) Instruct the Title Company to deliver to City the City's Title Policies and a copy of the owner's title insurance policy demonstrating that the Participant has acquired fee title to the Site;
- (b) Instruct the Title Company to deliver to Participant the Base Participant Policy;
- (c) Deliver documents as set forth in this Section 2.2.6;
- (d) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;
- (e) Deliver the FIRPTA Certificate, if any;
- (f) Disburse the moneys, if any, due to the respective parties hereto; and
- (g) Forward to both the Participant and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

**2.3 Review of Title.** The Participant has reviewed the condition of Title. The Participant shall cause the Title Company, within fifteen (15) days of the Date of Agreement, to deliver a copy of a pro forma title insurance policy showing the condition of title as it will appear at closing. The Participant acknowledges that, at closing, title is to be subject to:

- (a) The Redevelopment Plan.
- (b) The lien of any non-delinquent property taxes and assessments.
- (c) The provisions of the City Deed, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust and the Capital Recovery Deed of Trust.
- (d) Any incidental easements or other matters affecting title which do not materially impact the Participant's use of the Site as described in the Scope of Work: Budget.

Each party hereto shall expeditiously review the condition of title and shall confer and consult with one another in the event any exceptions to title are viewed as unacceptable or problematic by either such party. If such matters cannot be resolved to the mutual satisfaction of the Participant and the City, this Agreement may be terminated as provided pursuant to Sections 7.3(b) and 7.4.5 hereof.

**2.4 Title Insurance; Escrow Charges.** Concurrently with the recordation of the City Deed, the Title Company shall commit to issue to the Participant a CLTA owner's title policy based upon the Original Price (namely, \$263,000); a policy confirming to the foregoing constitutes the "Base Participant Policy." The premium for the Base Participant Policy shall be borne by the City. The premium or other costs for other or additional coverage for the benefit of the Participant shall be borne by the Participant. The Participant shall bear one-half of escrow charges and other closing costs.

Concurrently with recordation of the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust, the Title Company shall commit to issue to the City a lender's ALTA title policy for each such deed of trust based upon the original principal amount of such deed of trust secured thereby (the "City's Title Policies") or such other amount(s) as may be mutually agreed by the City and the Title Company. The City shall pay the premium for the City's Title Policies. Closing costs in connection with the deeds of trust having the City as beneficiary shall be borne by the City. One half of escrow charges and other closing costs.

**2.5 Environmental Condition of the Site.**

**2.5.1 Studies and Reports.** Prior to the Closing, Participant may obtain data and make any other or additional surveys, tests, studies, and reports necessary to evaluate the suitability of the Site for the Development, including the investigation of the environmental condition of the Site (collectively, the "Studies"). Any studies undertaken on the Site by Participant shall be done at the sole expense of Participant, and Participant shall make arrangements with the owner of the Site prior to undertaking such work and entering the Site. Any studies shall be undertaken only after Participant has secured the consent of the current owner and any necessary permits therefor from the appropriate governmental agencies. Participant hereby agrees to promptly provide the City with any and all Studies relating to the environmental condition of the Site when these become available to Participant.

**2.5.2 Approval of Environmental Condition of the Site.** Prior to the Closing, Participant shall approve or disapprove the environmental condition of the Site by written notice to the City. In the event that Participant disapproves the environmental condition of the Site, this



Agreement shall be terminated as provided in Section 7.3(b) hereof prior to the Closing. In the event Participant disapproves the condition of the Site because it determines that environmental remediation is required to place the Site in a condition suitable for use as required hereunder any party to this Agreement may terminate this Agreement as provided herein prior to the Closing.

**2.5.3 Indemnification.** Participant shall save, protect, pay for, defend (with counsel acceptable to the City), indemnify and hold harmless the City, and its respective elected and appointed officials, officers, employees, attorneys, representatives, volunteers, contractors and agents (collectively, “Indemnitees”) from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants’ fees, investigation and laboratory fees, attorneys’ fees and remedial and response costs and third-party claims or costs) (the foregoing are hereinafter collectively referred to as “Liabilities”) that may now or in the future be incurred or suffered by Indemnitees by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of: (i) the presence, use, release, escape, seepage, leakage, spillage, emission, generation, discharge, storage, or disposal of any Hazardous Materials in, on, under, or about, or the transportation of any such Hazardous Materials to or from, the Site; (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, leakage, spillage, emission, escape, discharge, storage, disposal, or transportation of Hazardous Materials in, on, under, or about, or to or from, the Site; (iii) the physical and environmental condition of the Site, and (iv) any Liabilities relating to any Environmental Laws and other Governmental Requirements relating to Hazardous Materials and/or the environmental and/or physical condition of the Site, whether such conditions arose before or after the Closing. The foregoing indemnification shall continue in full force and effect regardless of whether such condition, liability, loss, damage, cost, penalty, fine, and/or expense shall accrue or be discovered before or after the termination of the Required Covenant Period. This indemnification supplements and in no way limits the indemnification set forth in Section 4.7.

**2.5.4 Duty to Prevent Hazardous Material Contamination.** During the construction, development, operation and management of the Development, Participant shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Site. Such precautions shall include, but not be limited to, compliance with all Environmental Laws and other Governmental Requirements. Participant shall notify the City, and provide to the City a copy or copies of any notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to all Environmental Laws and other Governmental Requirements, and Participant shall report to the City, as soon as possible after each incident, any unusual or potentially important incidents in the event of a release of any Hazardous Materials into the environment.

**2.5.5 Release of City by Participant.** Participant hereby waives, releases and discharges forever the City and the Indemnitees from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, including attorneys’ fees, court and litigation costs and fees of expert witnesses, present and future, arising out of or in any way connected with Participant’s possession or use of the Site, improvement of the Site in accordance with this Agreement, the Scope of Development, and the land use entitlements obtained by Participant for the Development, and for the operation of the Development at the Site, of any Hazardous Materials on the Site, or the existence of Hazardous

Materials contamination in any state on, under, or about the Site, however they came to be located there.

In connection with the foregoing, Participant acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code that provides as follows:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

As such relates to this Section 2.5.5, Participant hereby waives and relinquishes all rights and benefits that it may have under Section 1542 of the California Civil Code.

Notwithstanding the foregoing, this waiver, discharge, and release shall not be effective in the event the presence or release of Hazardous Materials on the Site occurs as a result of the active willful misconduct of the City or its officers, employees, representatives and agents.

**2.5.6 Environmental Inquiries.** Participant shall notify the City upon receipt, and provide to the City a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Site or the Development: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Environmental Laws and other applicable Governmental Requirements relating to Hazardous Materials and underground tanks, and Participant shall report to the City, as soon as possible after each incident, all material information relating to or arising from such incident, including, but not limited to, the following:

- (a) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirements;
- (b) All notices of suspension of any permits relating to Hazardous Materials;
- (c) All notices of violation from federal, state or local environmental authorities relating to Hazardous Materials;
- (d) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;
- (e) All orders under the Porter Cologne Act, including corrective action orders, cease and desist orders, and clean up and abatement orders;
- (f) Any notices of violation from OSHA or Cal OSHA concerning employees’ exposure to Hazardous Materials;



(g) All complaints and other pleadings filed against Participant relating to the storage, use, transportation, handling or disposal of Hazardous Materials on or about the Site; and

(h) Any and all other notices, citations, inquiries, orders, filings or any other reports containing information which would have a materially adverse effect on the Site or the City's liabilities or obligations relating to Hazardous Materials.

In the event of a release of any Hazardous Materials into the environment, Participant shall, as soon as possible after the release, furnish to the City a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the City, but subject to any limitations imposed by law or by court order, Participant shall furnish to the City a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site or portion thereof in Participant's possession and/or shall notify the City of any environmental entitlements or inquiries relating to or affecting the Site within Participant's actual or constructive knowledge if Participant is not in possession of same, including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

### **3. CONDITIONS TO CLOSING; CONDITIONS TO DISBURSEMENT; REPORTING, RESERVES AND PAYMENTS BY PARTICIPANT**

**3.1 Conditions Precedent to Closing.** The City shall not convey the Site to Participant unless and until each and every one of the following conditions precedent (the "Conditions Precedent to Closing") has been fully satisfied, as determined in good faith by the City Manager (each of which condition[s], if it requires action by Participant, shall also be a covenant of Participant):

(a) Participant shall have approved the environmental condition of the Site and the condition of title;

(b) Participant shall have deposited with the Escrow Holder those amounts to be paid by the Participant pursuant to Section 2.4;

(c) **Representations and Warranties.** The representations and warranties of Participant contained in this Agreement shall be correct as of Closing; and

(d) **No Default.** No Event of Default by Participant shall have occurred under this Agreement, no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Participant under this Agreement, and City Manager shall have received a certificate to that effect signed by an officer of Participant.

All conditions set forth in Section 3.1, or to City's obligations hereunder, are for City's benefit only and the City Manager may waive all or any part of such rights (excepting as to subsection (e), above) by written notice to Participant and Escrow Holder. If the City Manager shall, within the applicable periods set forth herein, disapprove of any of the items which are subject to City's approval, or if any of the conditions set forth in this Agreement are not met within the times called for, City may thereafter terminate this Agreement without any further liability on the part of City by giving written notice of termination to the Escrow Holder, with a copy to Participant. Escrow Holder shall thereupon, without further consent from Participant, return to each party the documents and funds deposited by them.

**3.2 City's Conditions to Disbursement.** The City shall not disburse any portion of the City Disbursement Amount (excepting for those moneys, if any, heretofore disbursed by City for the purchase of the Site) or make any other disbursement to the Participant or to escrow for the purchase of the Site, as provided pursuant to this Agreement, unless and until each and every one of the following conditions precedent (the "Conditions Precedent to Disbursement") has been fully satisfied, as determined in good faith by the City Manager (each of which condition[s], if it requires action by Participant, shall also be a covenant of Participant):

(a) **Recording of Certain Documents.** A grant deed for the Site in form acceptable to City, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust have been recorded (or the Escrow Holder has confirmed that such instruments shall be recorded concurrent with the disbursement of such moneys, and that such instruments are ready to record).

(b) **Conditions Precedent to Closing.** The Conditions Precedent to Closing have been and remain satisfied.

(c) **Insurance.** City shall have received evidence, satisfactory to the City Manager, that all of the insurance policies required by Section 4.5, below, are in full force and effect.

(d) **Representations and Warranties.** The representations and warranties of Participant contained in this Agreement shall be correct as of the request for disbursement of funds by the City.

(e) **No Objection by HUD.** HUD shall not have objected to the approval of this Agreement or the disbursement in the manner, time and amounts set forth in this Agreement of moneys made available to the City under the HOME Regulations, and HUD shall have consented to such disbursements to the extent such consent is required under the HOME Regulations.

(f) **No Default.** No Event of Default by Participant shall have occurred under this Agreement, no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Participant under this Agreement, and the City Manager shall have received a certificate to that effect signed by an officer of Participant.

All conditions set forth in Section 3.2, or to City's obligations hereunder, are for City's benefit only and the City Manager may waive all or any part of such rights (excepting as to subsection (e), above) by written notice to Participant and Escrow Holder. If the City Manager shall, within the applicable periods set forth herein, disapprove of any of the items which are subject to City's approval, or if any of the conditions set forth in this Agreement are not met within the times called for, City may thereafter terminate this Agreement without any further liability on the part of City by giving written notice of termination to the Escrow Holder, with a copy to Participant. Escrow Holder shall thereupon, without further consent from Participant, return to each party the documents and funds deposited by them.

**3.3 Maintenance of Reserves.** Participant shall, commencing as of the first month following the first anniversary of the completion of the first Unit (as such completion is evidenced by the issuance of a certificate of occupancy by the City as to the corresponding building), set aside the Capital Replacement Reserve. The Capital Replacement Reserve shall be deposited into a separate interest-bearing trust account. Funds in the Capital Replacement Reserve shall be used for capital

replacements to the Improvements' fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Development become necessary, the Capital Replacement Reserve shall be the first source of payment therefor; provided, however, that Participant may first use other funds for payment with the prior consent of City Manager, which approval shall not be unreasonably withheld. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Participant of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site in the manner prescribed in this Section 3.3 and the CC&Rs. Participant, at its expense, shall submit to City on not less than an annual basis an accounting for the Capital Replacement Reserve. Any moneys in the Capital Replacement Reserve which are not expended as of June 1, 2067 shall be applied toward payment on one or more obligations payable by Participant to the City.

Capital repairs to and replacement of the Improvements shall include only those items with a long useful life, including without limitation the following: (a) appliance replacement; (b) hot water heater replacement; (c) plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; (d) air conditioning and heating replacement; (e) asphalt replacement; (f) roofing replacement; (g) landscape tree replacement and irrigation pipe and controls replacement; (h) gas line pipe replacement; (i) lighting fixture replacement; and (j) miscellaneous motors and blowers.

**3.4 Submittal of Annual Reports.** On or before each March 1 commencing March 1, 2017, the Participant shall submit the annual report provided for in Section 5.3.2 hereof and, at the same time, an Audited Financial Statement for the previous Year (or portion thereof), including all funds from whatever source provided to the Participant or any Related Entity in connection with the Development. The Audited Financial Statement shall demonstrate ongoing compliance with this Agreement, including without limitation the Senior Note, the Equity Share Note, and the Capital Recovery Note.

The Participant agrees that: (i) the Participant shall cooperate fully with the City and its designees in providing information necessary or convenient, in the reasonable judgment of the City, to the computation and verification of all payments due by Participant under this Agreement (including without limitation under the Senior Note, the Equity Share Note, the Capital Recovery Note and the CC&Rs), including without limitation a certified financial statement for the Participant each Year until all obligations under this Agreement (including without limitation the Attachments hereto) have been fully satisfied; if the City has reasonable cause to believe there has been an under-reporting, or otherwise at the City's discretion, the City may conduct an audit. The firm of Keyser Marston Associates, Inc., a certified public account selected by the City, or a firm or economist mutually acceptable to the City and the Participant will be employed to determine the payments due, and the costs of employing such firm shall be borne by the City; provided that if the audit reveals under-reporting of three percent (3%) or more of the amount payable to the City for the corresponding Year, the Participant shall reimburse the City for the cost of the audit. Until the cost of the audit has been paid, such amount shall be deemed to constitute an advance (and thus additional indebtedness) under the Capital Recovery Note.

**3.5 Payments by Participant To City.** The Participant shall make each and every payment as required under each of the Senior Note, the Equity Share Note, and the Capital Recovery Note.

#### 4. SCOPE OF WORK: BUDGET; INSURANCE AND INDEMNITY, FINANCING

**4.1 Scope of Work: Budget.** The Participant shall develop the Improvements in accordance with the City Disbursement Amount and the Scope of Work: Budget, and the approved plans, drawings and documents for the Improvements. In the event of any inconsistency between the Scope of Work: Budget and the plans for the Improvements which have been approved by the City, the approved Development plans shall control. In the event the Participant seeks disbursement of other City moneys due to encountering unanticipated construction problems in the course of implementing the Improvements, the Participant may submit a request for change order including additional City moneys, which request will include a specific delineation of the conditions encountered and the steps Participant proposes to address and correct such conditions. Participant agrees and acknowledges that there is no assurance that the City will have available to it moneys for such purpose, that only moneys made available to City under the HOME Regulations will be used for such purposes, and that any change orders/additional moneys will be subject to the City's customary change order process.

**4.2 Land Use Approvals.** Before commencement of construction of the Improvements or other works of improvement upon the Site, the Participant shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits, and approvals which may be required for the Improvements by the City or any other governmental agency affected by or having jurisdiction over such construction or work, including without limitation a license agreement between the Participant and the City allowing entry onto the Site which indemnifies City from any claims made in connection with the activities of the Participant. The Participant shall, without limitation, apply for and secure, and pay all costs, charges and fees associated therewith, all permits and fees required by the City, County of Riverside, and other governmental agencies with jurisdiction over the Improvements.

**4.3 Time of Performance; Progress Reports.** The Participant shall commence and complete construction of all of the Improvements on the Site by the times established therefor in the Schedule of Performance.

**4.4 Cost of Development.** The cost of planning, designing, developing, and constructing the Improvements shall be borne solely by the Participant, excepting for the disbursement by City of the City Disbursement Amount as provided in Section 4.4.1 hereof. Except to the extent otherwise expressly set forth herein, all fees imposed by any governmental entity in connection with the acquisition of the Site or the development of the Improvements shall be borne by Participant and shall be paid when due by Participant.

**4.4.1 Disbursement of the City Disbursement Amount.** The City Disbursement Amount shall be disbursed as drawdowns, as follows:

Disbursement for each category described above shall be made as progress payments during the Rehabilitation process subject to compliance with the following procedure:

(a) **Request for Payment.** Participant shall have submitted a request for payment to the City on a form supplied by the City, together with invoices from contractors and subcontractors and any other requested information and documents, indicating that the particular item for which payment is being requested is complete (if applicable).

(b) **Inspection of Work.** The City shall have inspected the particular item of work for which payment is being requested (if applicable) and shall have determined that such work has been completed in accordance with this Agreement and has been completed in a satisfactory manner in accordance with the standards of the applicable industry.

(c) **Verification of Amounts.** Amounts requested shall conform to budgeted amounts corresponding to the items for which payment is requested, as set forth in “The Scope of Work; Budget” (or, if the amounts exceed the amounts budgeted under that category, an offsetting saving equal or greater than any cost overrun under a particular category for which work has been completed or with respect to which the completion of such category of work is assured in the judgment of the City Manager).

(d) **No Default.** There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(e) **Representations and Warranties.** All representations and warranties of Participant herein contained shall be true and correct.

Within thirty (30) days following completion of the Rehabilitation, as determined by the City Manager, the City shall determine that portion of the remainder of the City Disbursement Amount which shall be disbursed to Participant. This final disbursement shall include costs of construction as well as allowances for payroll, staffing, administration, asset management, the Deemed Developer Fee, and a capital expense reserve up to the amounts established therefor in “the Scope of Work; Budget.” The City Manager may confer with the Participant concerning the amount of the final disbursement but the determination of the City Manager shall be final.

**4.5 Insurance Requirements.** Commencing as of initial disbursement of moneys by the City (but not later than recordation of the CC&Rs) and continuing throughout the Required Covenant Period, Participant shall maintain at Participant’s sole expense, with insurers reasonably approved by City, the following policies of insurance in form and substance reasonably satisfactory to City:

(a) workers’ compensation insurance and any other insurance required by law in connection with the Improvements or other work performed on the Site (to be in effect only while work is being performed on the Site);

(b) upon commencement of construction of the Improvements and at all times prior to completion of the Improvements, builder’s risk-all risk insurance covering 100% of the replacement cost of all Improvements (including offsite and the materials) during the course of construction in the event of fire, lightning, windstorm, vandalism, earthquake, malicious mischief and all other risks normally covered by “all risk” coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);

(c) following completion of the Improvements, fire and hazard “all risk” insurance covering 100% of the replacement cost of the Improvements in the event of fire, lightning, windstorm, vandalism, earthquake (if available at commercially reasonable rates), malicious mischief and all other risks normally covered by “all risk” coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);



(d) public liability insurance in amounts reasonably required by the City Manager from time to time, and in no event less than Two Million Dollars (\$2,000,000) for “single occurrence;”

(e) property damage insurance in amounts reasonably required by the City Manager from time to time, and in no event less than Two Million Dollars (\$2,000,000); and

(f) all other insurance reasonably required by the City Manager from time to time.

All such insurance shall provide that it may not be canceled or materially modified without 30 days prior written notice to City. The policies required under subparagraphs (b) and (c) shall include a “lender’s loss payable endorsement” (Form 438BFU) in form and substance satisfactory to City, showing City as an additional insured and loss payee. City shall be an additional insured in the policies required under subparagraphs (d) and (e). No such insurance shall include deductible amounts to which City has not previously consented in writing. Certificates of insurance for the above policies (and/or original policies, if required by City) shall be delivered to City from time to time within 10 days after demand therefor. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Participant shall deliver to City evidence of renewal or replacement of such policy reasonably satisfactory to the City Manager.

Coverage provided hereunder by Participant shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City. None of the above-described policies shall require Participant to meet a deductible or self-insured retention amount of more than Five Thousand Dollars (\$5,000.00) unless approved in writing by the City Manager. All policies shall be written by good and solvent insurers qualified to do business in California and shall have a policyholder’s rating of A or better in the most recent edition of “Best’s Key Rating Guide -- Property and Casualty.” The required certificate shall be furnished by Participant at the time set forth herein.

**4.5.1 Waiver of Subrogation.** Participant hereby waives all rights to recover against City (or any officer, employee, agent or representative of the City) for any loss incurred by Participant from any cause insured against or required by any Development Document to be insured against; provided, however, that this waiver of subrogation shall not be effective with respect to any insurance policy if the coverage thereunder would be materially reduced or impaired as a result. Participant shall use its best efforts to obtain only policies which permit the foregoing waiver of subrogation.

**4.6 Obligation to Repair and Restore Damage Due to Casualty.** If during the period of construction the Improvements shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Participant, Participant shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be constructed pursuant to this Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Participant shall complete the same as soon as possible thereafter so that the Improvements can be occupied as an

affordable housing project in accordance with this Agreement. In no event shall the repair, replacement, or restoration period exceed fourteen (14) months from the date Participant obtains insurance proceeds unless the City Manager, in his or her sole and absolute discretion, approves a longer period of time. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, Participant may elect not to repair, replace, or restore the Improvements by giving notice to City (in which event Participant will be entitled to all insurance proceeds but Participant shall be required to remove all debris from the Site) or Participant may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City and the other governmental agency or agencies with jurisdiction, and the City may pursue remedies of its choosing under this Agreement, including without limitation termination.

**4.7 Indemnity.** Participant shall defend (by counsel satisfactory to City), indemnify and save and hold harmless City and their officers, contractors, agents and employees (collectively, the “Indemnitees”) from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys’ fees and court costs) arising from or relating to: (i) this Agreement (including without limitation Section 4.9 hereof); (ii) the disbursement of amounts equal to the City Disbursement Amount; (iii) a claim, demand or cause of action that any person has or asserts against Participant; (iv) any act or omission of Participant, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Site; (v) the ownership, occupancy or use of the Site; or (vi) any claims for relocation benefits or assistance in connection with the acquisition of the Site or the implementation of this Agreement. Notwithstanding the foregoing, Participant shall not be obligated to indemnify the City with respect to the consequences of any act of gross negligence or willful misconduct of the City. Participant’s obligations under this Section 4.7 shall survive the issuance of the Certificate of Completion and termination of this Agreement; the requirements under this Section 4.7 are in addition to and do not limit the obligations of the Participant under any of the instruments provided for as attachments to this Agreement, including without limitation the CC&Rs and the Resale Restriction Agreement.

The Participant shall reimburse the City immediately upon written demand for all costs reasonably incurred by the City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of the Development Documents and all related matters including the following: (a) the City’s commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Development Document, and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which the City is indemnified under the Development Documents.

The Participant shall indemnify the City from any real estate commissions or brokerage fees which may arise from this Agreement or the Site, including without limitation the acquisition of the Site by the Participant, or the leasing of dwelling units on the Site. The Participant represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Participant agrees to hold the City harmless from any claim by any broker, agent or finder in connection with this Agreement, the activities by the Participant, or the Site.

In addition, and without limitation to the foregoing, Participant agrees to indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without

limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. This indemnity shall 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. At the request of the Participant, the City shall cooperate with and assist the Participant in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the City shall not be obligated to incur any expense in connection with such cooperation or assistance. Upon the Closing, the Participant shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, the Participant shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**4.8 Rights of Access.** Prior to the issuance of the Certificate of Completion, for purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as City representatives comply with all safety rules. City representatives shall, except in emergency situations, notify the Participant prior to exercising its rights pursuant to this Section 4.8; provided that City representatives shall in addition, have all rights and access to Site necessary or convenient to enforce building codes and other laws.

**4.9 Compliance With Laws.** Participant shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including all applicable federal and state labor standards (including without limitation provisions for payment of prevailing wages in connection with all construction of the Improvements), the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and the Fair Housing Act, 42 U.S.C. Section 3601 *et seq.* (and 24 C.F.R. Part 100), the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.* Participant, including but not limited to its contractors and subcontractors, shall comply with Labor Code Section 1720, *et seq.*, and its implementing regulations, regarding the payment of prevailing wages and the Davis-Bacon Act (collectively, the "Prevailing Wage Laws") with regard to the construction of the Improvements. Participant hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold the City, its officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Participant's acts or omissions pertaining to the compliance with the Prevailing Wage Laws for the Improvements. Participant agrees and acknowledges that federal prevailing wages under the Davis-Bacon Act are applicable to the Improvements under the HOME Regulations, and Participant agrees to comply with



the HOME Regulations (including without limitation or respect to the payment of federal prevailing wages).

Participant shall include a Section 3 Clause in all construction contracts and subcontracts with respect to the Site and any work undertaken thereon or with respect thereto. Participant shall comply with Section 3.

Without limitation as to Section 4.7 of this Agreement, Participant shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Participant of any applicable local, state and/or federal law, including, without limitation, the Rules and Regulations and any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and, if greater, prevailing wages under the Davis-Bacon Act); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; (3) failure by Participant to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law; and/or (4) failure to comply with the HOME Regulations and all regulations and laws applicable in connection thereafter.

**4.9.1 Selection of Subcontractors.** Participant or the General Contractor, as applicable, shall solicit no fewer than three (3) competitive bids from qualified, licensed, insured, and bonded Subcontractors for each portion of the construction work to be separately contracted for by each Participant or the General Contractor, as applicable, and Participant shall select the Subcontractor(s) that have submitted the lowest responsible and responsive bid for each such separately contracted-for portion of the Development. City shall have every reasonable right and opportunity to review all materials, bid packages, and related documents and to observe and attend all stages of and meetings related to such competitive bidding process, including without limitation a right to review the invitation to bidders and each submitted bid package and the right to be present when each bid is opened by Participant and/or the General Contractor and all selected Subcontractors shall be reasonably acceptable to the City Manager. Participant shall provide copies of all documents and other information reasonably necessary or appropriate to permit City to verify that Participant has solicited competitive bids from such qualified contractors pursuant to this Section 4.9.1 and selected the lowest responsible and responsive Subcontractors as required herein, including copies of the invitation to bidders, all documents distributed to potential bidders by Participant, and all submissions received from bidding contractors in response thereto. Participant shall also submit to City evidence regarding each entity serving and/or contracting as the Subcontractor for each portion of the construction of the Development and all other on-site and off-site improvements required to be constructed in connection therewith in accordance with the Scope of Work: Budget, including all required licenses, certifications, insurance, etc., as determined in good faith by the City Manager.

**4.10 Nondiscrimination in Employment.** Participant certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability.

**4.11 Taxes and Assessments.** Participant shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site. Participant shall remove or have removed any levy or attachment made on the Site or any part thereof which is owned or leased by Participant, or assure the satisfaction thereof within a reasonable time, but in no event to exceed sixty (60) days. The Participant shall additionally defend, indemnify, and hold harmless the City from and against any taxes, assessments, mechanic's liens, claims of materialmen and suppliers, or other claims by private parties in connection with (a) activities undertaken by the Participant or (b) the Site.

**4.12 Liens and Stop Notices.** Participant shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Improvements the Participant shall within thirty (30) days of such recording or service or within five (5) days of City's demand whichever last occurs:

- (a) pay and discharge the same; or
- (b) effect the release thereof by recording and delivering to City a surety bond in sufficient form and amount, or otherwise; or
- (c) provide City with indemnification from the Title Company against such lien or other assurance which City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

**4.13 Certificate of Completion.** Promptly after completion of the Improvements in conformity with this Agreement, City will furnish the Participant with a Certificate of Completion substantially in the form of Attachment No. 8 hereto. City shall not unreasonably withhold such Certificate of Completion; provided that a refusal to provide a Certificate of Completion in the event of objection by HUD or the failure by HUD to approve disbursements by City under this Agreement shall be conclusively deemed to be reasonable for purposes of this Section 4.13. The Certificate of Completion shall be a conclusive determination of satisfactory completion of the Improvements and the Certificate of Completion shall so state. If City refuses or fails to furnish a Certificate of Completion after written request from Participant, City shall, within fifteen (15) days of receipt of written request therefor, provide Participant with a written statement of the reasons City refused or failed to furnish the Certificate of Completion. The statement shall also contain City's opinion of the actions Participant must take to obtain the Certificate of Completion or notification that HUD has failed to approve of the making of disbursements under this Agreement. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

**4.14 Further Assurances.** The City will undertake good faith efforts to obtain an appraisal or a review appraisal (in the event Participant makes available to City for review an appraisal) prior to the time set forth in this Agreement for the satisfaction of the Conditions Precedent to Disbursement.

Participant shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to City all documents, and take all actions, reasonably required by City from time to time to confirm the rights created or now or hereafter intended to be created under the Development Documents or otherwise to carry out the purposes of the Development Documents. Participant shall, in addition, cooperate with HUD and promptly and fully provide such documentation as may from time to time be requested by HUD.

**4.15 City Investment; Preservation of Affordable Rental Housing Resource; Credit Based Upon Developer Fee at Stabilized Occupancy.** The City will be providing one hundred percent (100%) of the equity (and approximately 100% of the total funding) required for the purchase of the Site and the improvement of the Site under the Scope of Work: Budget. The City's willingness to enter into this Agreement and devote the level of funding as prescribed under this Agreement is based upon assurance that all Units on the Site will be maintained available at Affordable Rent at Prescribed Rent Levels as Qualifying Rentals throughout the Required Covenant Period.

The Participant is a sophisticated party with substantial experience in the acquisition, improvement and operation of affordable rental housing and with California real estate law. Participant has reviewed, and has consulted with legal counsel of Participant's choosing, concerning this Agreement, including without limitation the HOME Regulations, the Rules and Regulations, the Senior Note, the Equity Share Note, the Capital Recovery Note as well as the City Deed, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust.

The Participant agrees and acknowledges that it is reasonable that the City have all rights and remedies, including without limitation equity sharing, limits upon resale or transfer, and such other restrictions or prohibitions as are provided under this Agreement and its attachments including without limitation the City Deed, the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Equity Share Note, the Capital Recovery Note, the Senior Deed of Trust, the Equity Share Deed of Trust and the Capital Recovery Deed of Trust.

Upon the achievement of Stabilized Occupancy in conformity with this Agreement (including the requirement of occupancy of households of the appropriate income category paying rent that is not greater than Affordable Rent), the sum of Forty Thousand Dollars (\$40,000.00), to reflect a developer fee, will be applied as a one-time credit against the outstanding principal amounts under the Capital Recovery Note (as to which a credit of \$40,000 will be applied). The Participant will promptly inform the City that it is achieved Stabilized Occupancy in a writing referencing this Section 4.15 and requesting application of the foregoing credit and will provide evidence establishing such circumstance to the reasonable satisfaction of the City Manager. Upon confirmation by the City Manager that Stabilized Occupancy has been received, the City Manager will cause the account maintained for the Capital Recovery Note to reflect the credit described in the foregoing portion of this paragraph; such credit shall thereupon be deemed applicable without necessity of re-executing the Capital Recovery Note.

## **5. COVENANTS AND RESTRICTIONS**

**5.1 Use Covenants.** Participant covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that the Participant shall devote the Site to the uses specified in and shall operate in conformity with this Agreement, the City Deed and the CC&Rs. All uses conducted on the Site, including, without limitation, all activities undertaken by the Participant pursuant to this Agreement, shall conform to all applicable provisions of the City Municipal Code and, to the extent applicable, the Redevelopment Plan.

### **5.2 Affordable Housing Requirements.**

**5.2.1 Number of Affordable Units.** Participant agrees to make available, restrict occupancy to, and rent all of the Required Affordable Units at Affordable Rent. There shall be four (4) Required Affordable Units on the Site, all of which shall remain available at Affordable Rent, all of which are one (1) bedroom, one (1) bath units, three of which shall be available to and occupied by Low Income Households and one of which shall be available to and occupied by Very Low Income Households. An example of the calculation of Affordable Rent for the Required Affordable Units is attached hereto as Attachment No. 5 and incorporated herein; provided that in the event of conflict between such example and the definitions contained within the body of this Agreement, the definitions shall control: the Affordable Rent for the Housing Units to be rented to Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Median Income for Riverside County as determined and published annually by TCAC for a family of a size appropriate to the unit, or, if lower, rents determined in accordance with the HOME Regulations. The Affordable Rent for the Housing Units to be rented to Very Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Median Income for Riverside County as determined and published annually by TCAC for a family of a size appropriate to the unit, or, if lower, rents determined in accordance with the HOME Regulations.

Participant shall, and shall cause its Property Manager to, operate the Project and cause occupancy of all Housing Units thereon in conformity with these covenants and this Agreement.

**5.2.2** For purposes of this Agreement, “Affordable Rent” means the total of monthly payments for (a) use and occupancy of each Housing Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Participant which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, or cable TV or internet services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Participant. No additional charge shall be assessed against tenant households of the Housing Units for any social or supportive services provided at the Site and/or as a part of Participant’s compliance with the legal requirements imposed in connection with any Project Based Section 8 assistance pursuant to Section 409.

**5.2.3 Duration of Affordability Requirements.** The Required Affordable Units shall be maintained as rental units available at and rented to Low Income Households at Affordable Rent throughout the Required Covenant Period, as more particularly set forth in the CC&Rs.

**5.2.4 Selection of Tenants.** Participant shall be responsible for the selection of tenants for the Required Affordable Units in compliance with the criteria set forth in Section 5.3 of this Agreement. Age shall not be a factor in the selection of tenants.

**5.2.5 Income of Tenants.** Each tenant shall be a Low Income Household which meets the eligibility requirements established for the corresponding Required Affordable Unit, and Participant shall obtain a certification from each tenant renting or leasing each housing unit which substantiates such fact. Participant shall verify the income certification of each tenant as set forth in Section 5.3 hereof. Prior to the rental or lease of any housing unit on the Site to a tenant, and annually thereafter, the Participant shall submit to City or its designee, at Participant’s expense, a completed income computation and certification form, in a form to be provided by City. Participant

acknowledges that City shall, to the extent provided under the HOME Regulations or requested by HUD, make such reports available to HUD.

**5.2.6 Determination of Affordable Rent for the Housing Units.** Each Required Affordable Unit shall be rented at an Affordable Rent.

“Household size appropriate to the unit,” for the purpose of the calculation of rent herein (and without regard to actual occupancy, there being no restrictions on the number of occupants allowable per dwelling unit imposed by this Agreement), means three persons for each two bedroom unit; provided that the maximum monthly rental amount of the Required Affordable Units shall be adjusted annually by the formula set forth above upon the promulgation of revised figures concerning Median Income for the Area by regulation of the California Department of Housing and Community Development (“HCD”). Actual rent charged may be less than such maximum rent.

Notwithstanding any other provisions of this Agreement, to the extent that the HOME Requirements are more restrictive with respect to the requirements applicable to tenant selection, tenant income levels and unit rent levels than as otherwise provided in this Agreement, the City Covenants or the Authority Participant CC&Rs, then the HOME Requirements shall control and the Participant’s compliance with the more restrictive requirements thereof shall not be a default hereunder.

### **5.3 Verifications.**

**5.3.1 Income Verification.** Participant shall verify the income of each proposed and existing tenant of the Required Affordable Units.

**5.3.2 Annual Reports.** Following the issuance of the Certificate of Completion, and on or before March 15 of each Year, Participant, at its expense, shall submit to City or its designee the reports in the manner described in Health and Safety Code Section 33418, as the same may be amended from time to time, with each such report to be in the form prescribed by City. Each annual report shall cover the immediately preceding fiscal year.

The Participant shall maintain on file each tenant’s executed lease and Income Verification and rental records for the Required Affordable Units. The Participant shall maintain complete and accurate records pertaining to the Required Affordable Units and will permit any duly authorized representatives of the City to inspect the books and records of the Participant pertaining to this Agreement and the Required Affordable Units. The Participant shall prepare and submit to the City (or its designee) annually commencing March 1, 2017 and continuing throughout the Required Covenant Period, a Certificate of Continuing Program Compliance. Such documentation shall state for each Required Affordable Unit the unit size, the rental amount, the number of occupants, and the income of the occupants and any other information which may be used to determine compliance with the terms of this Agreement. Participant acknowledges that City shall make all such reports available to the extent provided under the HOME Regulations or requested by HUD, to HUD.

**5.4 Maintenance of Site.** Participant agrees for itself and its successors in interest to the Site, to maintain the improvements on the Site in conformity with the City Municipal Code and the conditions set forth in the CC&Rs, and shall keep the Site free from any accumulation of debris or waste materials. During such period, the Participant shall also maintain the landscaping planted on the Site in a healthy condition.



**5.5 Nondiscrimination Covenants.** Participant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Participant or any person claiming under or through the Participant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The foregoing covenants shall run with the land.

Participant shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

**In leases:** “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased. The foregoing covenants shall run with the land.”

**In contracts:** “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises subject to this agreement nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to

the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises. The foregoing covenants shall run with the land.”

**5.6 Effect of Violation of the Terms and Provisions of this Agreement after Completion of Construction.** The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site or in the Project Area of the Redevelopment Plan. The City shall have the right, if the Agreement or any covenants in any agreement pursuant to this Agreement including without limitation the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust, the Equity Share Note or the Equity Share Deed of Trust are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and such covenants may be entitled.

**5.7 No Subordination of Covenants.** The CC&Rs shall not be subordinated. In addition, the Participant will not request and the City will not subordinate any of the Senior Deed of Trust, the Equity Share Deed of Trust, the Capital Recovery Deed of Trust and the Resale Restriction Agreement.

## **6. PARTICIPANT’S GENERAL REPRESENTATIONS AND WARRANTIES.**

As a material inducement to City to enter into this Agreement, Participant represents and warrants to the City that:

**6.1 Formation, Qualification and Compliance.** Participant (a) is a California nonprofit public benefit corporation validly existing and in good standing under the laws of the State of California; (b) has all requisite and the authority to conduct its business and own, purchase, improve and sell its properties. Participant is in compliance in all material respects with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with any governmental agency that are necessary for the transaction of its business; (c) Participant has and will in the future duly authorize, execute and deliver this Agreement and any and all other agreements and documents required to be executed and delivered by the Participant in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement; (d) Participant does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of the Participant to carry out its obligations hereunder; (e) There are no material pending or, so far as is known to the Participant, threatened, legal proceedings to which the Participant is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed by the Participant to the City in this Agreement which could materially adversely affect the ability of the Participant to carry out its obligations hereunder; (f) Participant is a community development organization (or “CHODO”) within the meaning of § 92.2 of the HOME Regulations; (g) Participant has reviewed the Rules and Regulations, the HOME Regulations, and is familiar with and prepared to comply with all terms thereof; and (h) There is no action or proceeding pending or, to the Participant’s best knowledge, threatened, looking toward the dissolution or liquidation of the Participant and there is no action or proceeding pending or, to the Participant’s best knowledge, threatened by or against the Participant which could affect the validity and enforceability of the terms

of this Agreement, or materially and adversely affect the ability of the Participant to carry out its obligations hereunder.

Each of the foregoing items (a) to (h), inclusive, shall be deemed to be an ongoing representation and warranty. The Participant shall advise the City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (h), inclusive.

**6.2 Execution and Performance of Development Documents.** Participant has all requisite authority to execute and perform its obligations under the Development Documents. The execution and delivery by Participant of, and the performance by Participant of its obligations under, each Development Document has been authorized by all necessary action and do not and will not violate any provision of, or require any consent or approval not heretofore obtained under, any articles of incorporation, by-laws or other governing document applicable to Participant.

**6.3 Covenant Not to Transfer Except in Conformity.** Excepting for the rental of individual dwelling units to Low Income Households as occupants in the regular course of business (which rental activity shall not be limited by this Section 6.3), the Participant shall not sell, lease, or otherwise transfer or convey all or any part of the Site, or any interest therein, unless the Participant has first obtained the prior written consent of the City Manager, which consent may be granted or refused in the City Manager's sole and absolute discretion. In connection with the foregoing consent requirement, Participant acknowledges that City relied upon Participant's particular expertise and its status as a CHODO in entering into this Agreement and continues to rely on such expertise and status to ensure the satisfactory completion of all of the Improvements, and the marketing and rental of the Required Affordable Units to Low Income Households at Affordable Rent to advance the City's objectives in providing affordable housing units and to afford the community a long-term, quality affordable housing resource.

## **7. DEFAULTS, REMEDIES, AND TERMINATION.**

**7.1 Default Remedies.** Subject to the extensions of time set forth in Section 7.10 of this Agreement, failure by a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" or "Event of Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default. Except as otherwise expressly provided in this Agreement, and without limiting or affecting rights of parties hereto to terminate this Agreement, the claimant shall not institute any proceedings against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy the specified Default and shall complete such cure, correction or remedy with diligence.

Notwithstanding any provision of this Agreement to contrary effect, in no event shall the City be liable under this Agreement in the event HUD objects to or fails to approve or consent to this Agreement or the mailings of disbursements hereunder by the City.

**7.2 Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any party may institute an action at law or 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. Such legal actions must be instituted in the Superior Court of the County of Riverside, State of California, or in the federal court for the Central District of California.

**7.3 Termination by the Participant.** In the event that:

(a) the Participant is not in default under this Agreement and City does not disburse funds to or for the benefit of the Participant in the manner and condition and by the date provided in this Agreement; or

(b) the Participant does not approve the condition of title or the environmental condition of the Site; or

(c) in the event of any default of City prior to the acquisition of the Site by the Participant which is not cured within the time set forth in Section 7.1 hereof; and

any such failure is not cured within the applicable time period after written demand by the Participant, then this Agreement may, at the option of the Participant, be terminated by Notice thereof to City; provided that the Participant shall have delivered to the City the documents required to be delivered to the City pursuant to this Agreement. From the date of the Notice of termination of this Agreement by the Participant to City and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties.

**7.4 Termination by City.** In the event that prior to the time established in the Schedule of Performance for the satisfaction of the Conditions Precedent to Disbursement:

**7.4.1** Participant (or any successor in interest) assigns this Agreement or any rights therein or in the Site in violation of this Agreement; or

**7.4.2** Participant does not fulfill the Conditions Precedent to Disbursement and such failure is not caused by City; or

**7.4.3** Participant fails to execute on or more of the City Deed, the CC&Rs, the Senior Note, the Senior Deed of Trust, the Equity Share Note, the Capital Recovery Note, the Equity Share Deed of Trust, the Capital Recovery Deed of Trust or such other additional documentation as may be requested by the City or HUD; or

**7.4.4** Participant is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 7.1 hereof; or

**7.4.5** The City does not obtain, prior to the time set forth in this Agreement for the satisfaction of the Conditions Precedent to Disbursement, an appraisal or a review appraisal conforming to 49 C.F.R. §24.103 and which expresses an opinion of value as to the Site of at least One Hundred Eighty Nine Thousand Fifty Dollars (\$263,000.00); or

**7.4.6** The Participant does not approve the condition of title or the environmental condition of the Site; or

**7.4.7** The Prior Owner does not convey the Site to the City or the Participant prior to the time established for the Closing; or

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**7.4.8** The City receives notification from HUD that HUD does not consent to this Agreement or disapproves this Agreement or the making of disbursements by the City provided for in this Agreement;

then this Agreement and any rights of the Participant or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of City, be terminated by City by Notice thereof to the Participant. From the date of the Notice of termination of this Agreement by City to the Participant and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties, except that City may pursue any remedies it has hereunder.

**7.5 Acceptance of Service of Process.** In the event that any legal action is commenced against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced against the Participant, service of process on the Participant shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

**7.6 Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

**7.7 Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**7.8 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement; provided that, concerning the HOME Regulations, federal laws shall control in the event of conflict.

**7.9 Federal Funding of HOME Loan.** Due to the source of funding from HOME Program funds, which is a federal revenue source, Participant shall comply with all applicable Federal Program Limitations, including without limitation, the following federal provisions.

**7.9.1 Property Standards.** Participant agrees to ensure that Construction of the Project and operation of the Housing Units during the HOME Compliance Period, both the Senior Citizen Housing Units and the Non Senior/Family Housing Units and all ancillary and appurtenant improvements, will comply with all applicable requirements of the HOME Regulations, including 24 CFR §92.251, including the following requirements:

**7.9.2 State and Local Requirements.** The Project and all Housing Units and common areas at the Site shall meet all applicable State and local codes, ordinances, and zoning requirements, including all applicable requirements set forth in the Municipal Code and all applicable State and local residential and building codes. The Project and all Housing Units and common areas at the Site must meet all such applicable requirements upon Project completion.

**7.9.3 HUD Requirements.** The Project and all Units and common areas at the Site shall also meet the requirements described in paragraphs (i) through (iv) of this Section 1302.1(b):

**7.9.4 Accessibility.** The Project and all Units and common areas at the Site shall meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

**7.9.5 Disaster Mitigation.** Where relevant, the Project must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

**7.9.6 Written Cost Estimates, Construction Contracts and Construction Documents.** The Construction Contract(s) and development plans must describe the Construction work to be undertaken in adequate detail so that the City can conduct inspections in accordance with the HOME Regulations. The Participant shall also provide written cost estimates for Construction for City's review; City shall determine whether such cost estimates are reasonable.

**7.9.7 Construction Progress Inspections.** Participant shall permit and facilitate progress and final inspections of Construction by the City to ensure that work is done in accordance with the applicable codes, the Construction Contract(s), and Development Plans.

**7.9.8** Participant shall maintain the Project, including all Units and common areas at the Site: (i) as decent, safe, and sanitary housing in good repair, (ii) free of all health and safety defects and life-threatening deficiencies, and (iii) in compliance with the lead-based paint requirements in 24 CFR Part 35.

**7.9.9 Inspections; Corrective and Remedial Actions.** In accordance with the HOME Regulations, City shall undertake ongoing inspections of the Project in accordance with §92.504(d). City has developed written inspection procedures and procedures for ensuring that timely corrective and remedial actions are taken by the Participant to address identified deficiencies.

**7.9.10 Labor Standards.** In addition to compliance with Section 490, to the extent required by applicable federal and/or state laws, the Construction Contract for the Project, as well as any other contract for the Construction work, shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of the United States Department of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §276a-276a-5), will be paid to all laborers and mechanics employed in the Construction work, and such contract(s) shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §3701, et seq.). Participating contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participant shall supply to City certification, in form and substance satisfactory to HUD and City Manager, as to compliance with the applicable provisions of this Section before receiving any disbursement of federal funds for the Construction work. If required by applicable federal and/or state law, Participant shall require the General

Contractor to implement and enforce all applicable prevailing wage and labor laws, including California Labor Code Section 1720, Davis-Bacon, and other applicable labor laws and regulations including, e.g., the requirement that all workers sign in and sign out of the job site (to the extent such requirement is applicable by law).

**7.9.11 Handicapped Accessibility.** Participant shall comply with (a) Section 504 of the Rehabilitation Act of 1973, and implementing regulations at 24 CFR 8C governing accessibility of projects assisted with federal funds; and (b) the Americans with Disabilities Act of 1990, and implementing regulations at 28 CFR 35–36 in order to provide handicapped accessibility to the extent readily achievable; and (c) the Uniform Federal Accessibility Standards (UFAS) pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157, as amended.

**7.9.12 Use of Debarred, Suspended, or Ineligible Participants.** Participant shall comply (and cause the General Contractor to comply) with the provisions of 24 CFR 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status. The Contractor, each subcontractor, and any other contractors or subcontractors or agents of Participant (subject to compliance with 24 CFR part 135) shall have provided to City the certification in appendix B of 24 CFR Part 24 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from this Project, and City shall be responsible for determining whether each contractor has been debarred.

**7.9.13 Maintenance of Drug-Free Workplace.** Participant shall certify that Participant will provide a drug-free workplace in accordance with 2 CFR 2429.

**7.9.14 Lead-Based Paint.** City, as a recipient of federal funds, has modified and conformed all of its federally funded housing programs to the Lead-Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. §4800, et seq., specifically §§4821 4846, and the implementing regulations thereto. In this regard, Participant shall comply with all applicable federal requirements relating to lead-based paint.

**7.9.15 Affirmative Marketing.** Participant shall adopt and implement affirmative marketing procedures and requirements at the Site in accordance with Section 92.351 of the HOME Regulations.

**7.9.16 Nondiscrimination, Equal Opportunity and Fair Housing.** Participant shall carry out the Project and perform its obligations under this Agreement in compliance with all of the federal laws and regulations regarding nondiscrimination equal opportunity and fair housing described in 24 CFR 92.350 and 24 CFR 5.105.

**7.9.17 Energy Conservation Standards.** As applicable to the Project, Participant shall cause the Site to meet the cost-effective energy conservation and effectiveness standards in 24 CFR 965 and 24 CFR 990.185.

**7.9.18 Displacement and Relocation.** Participant acknowledges and agrees that, pursuant to Federal Program Limitations and consistent with the other goals and objectives of that part, City must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of the Construction work. In the event displacement were to occur, Participant shall cause all Relocation of tenants and occupants at the Project to be conducted in accordance with the

Relocation Laws and all Federal Program Limitations. Participant further agrees to cooperate with City in meeting the requirements of the Federal Program Limitations and shall take all actions and measures reasonably required by City Manager (or her duly authorized representative) in connection therewith.

**7.9.19 Requests for Disbursements of Funds.** Participant may not request disbursements of funds hereunder until the funds are needed for payment of eligible costs of the Project. The amount of each request shall be limited to the amount needed for the acquisition of the Conforming Leasehold Interest in the Site and the Construction as set forth in the Final Budget.

**7.9.20 Eligible Costs.** Participant shall only use HOME Program funds to pay costs defined as “eligible costs” under Federal program limitations.

**7.9.21 Records and Reports.** Participant shall maintain and from time to time submit to City such records, reports and information as City Manager may reasonably require in order to permit City to meet the recordkeeping and reporting requirements required of them pursuant to 24 CFR 92.508. Without limiting the following, Participant shall maintain records and submit annual reports as required by this Agreement.

**7.9.22 Conflict of Interest.** Participant shall comply with and be bound by the conflict of interest provisions set forth at 24 CFR 570.611.

**7.9.23 Layering Review.** Participant acknowledges that a layering review has been performed prior to the Date of Agreement and shall be updated and performed in accordance with Federal Program Limitations as a condition to Closing. In connection with such review Participant acknowledges and agrees it shall be required to represent and certify to City that no government assistance other than the loans as provided by City pursuant to this Agreement has been obtained or is contemplated to be obtained for the Construction and operation of the Project on the Site. If and when, such layering review is conducted, Participant agrees to notify City in the event that it applies for or proposes to use governmental funds, other than as listed in the previous sentence, for the Project at the Site.

**7.10** [Intentionally Omitted.]

**7.11 Enforced Delay; Extension of Times of Performance; Other Limited Extensions by City Manager.** In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts or omissions of another party, or acts or failures to act of the City or any other public or governmental agency or entity (excepting that acts or failures to act of City shall not excuse performance by City). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Participant. Notwithstanding any provision of this Agreement to the contrary, or the lack of funding to complete the Development shall not constitute grounds of enforced delay pursuant to this Section 7.10. Notwithstanding the foregoing,



times for performance shall not be excused in the event of the objection by HUD or the failure by HUD to consent to or approve of the making of disbursements hereunder.

The City Manager shall have the authority to approve extensions on behalf of City to approve extensions of time not to exceed a cumulative total of sixty (60) days.

**7.12 Transfers of Interest in Agreement or of Site.** Section 7.11, and all subsections of this Section 7.11, shall apply to transfers prior to the Transfer. Any transfers occurring or proposed after the Transfer are subject to the provisions therefor of the CC&Rs.

**7.12.1 Prohibition.** The qualifications and identity of the Participant are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with the Participant. For the period commencing upon the date of this Agreement and until the end of the Required Covenant Period, no voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement, nor shall the Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Development thereon (excepting the rental of Units at Affordable Rent to Low Income Households in strict conformity with this Agreement and the CC&Rs) without prior written approval of City, except as expressly set forth herein.

**7.12.2 Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, the City shall not unreasonably withhold its approval of an assignment of this Agreement or conveyance of the Site, or any part thereof, in connection with the conveyance or dedication of any portion of the Site to the City, or the granting of easements or permits to facilitate construction of the Development.

In the event of a proposed assignment by Participant under subparagraphs 7.11.2 through 7.11.3, inclusive, Participant agrees that at least thirty (30) days prior to such assignment it shall give written notice to City including a request for approval of such assignment and satisfactory evidence that the assignee has assumed jointly with Participant the obligation to perform under this Agreement.

**7.12.3 City Consideration of Requested Transfer.** City agrees that it will consider in good faith a request made pursuant to this Section 7.11 after the achievement of occupancy of one hundred percent (100%) of the Units in conformity with this Agreement following the completion of the Improvements, provided that: (i) the Participant causes to be delivered to City written evidence from HUD that HUD consents to and does not object to the action requested; (ii) the Participant pays, or is prepared to pay concurrent with transfer, the amount due under the Equity Share Note in connection with such transfer; (iii) the Participant delivers written notice to City requesting such approval, which notice and the CC&Rs remain in full force and effect; (iv) the Participant is not in default of this Agreement or any attachments hereto; (v) the Participant provides detailed information regarding the transferee (the background, training, experience relative to the operation of affordable rental projects, and its capitalization) and of the proposed transfer (including price, terms of payment, time and place for closing); and/or the agreement of the transferee to be bound by and subject to all of the Development Documents, including without limitation, the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Capital Recovery Note, the Equity Share Note (which shall be adjusted upon transfer based upon the receipt of equity sharing moneys by the City, as more fully described in the Equity Share Note), the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust; and (vi) the Participant pays to City the sum of Five Thousand

Dollars (\$5,000.00) (“Special Charges”), on a nonrefundable basis to assist City in defraying its cost to conduct due diligence, consider and process any such request (amounts so paid as Special Charges shall not be applied as payments due under the Equity Share Note or any other Promissory Note). Evidence regarding any proposed assignee or purchaser shall be detailed concerning the proposed assignee’s or purchaser’s development and/or operational qualifications and experience, its financial commitments and resources, and shall, in addition, describe in detail the financial terms of such assignment (including the consideration proposed to flow to the Participant or Related Entity and/or any of the Principals) in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 7.11, and as reasonably determined by City. Upon receipt of such request (including payment of the amount due as the equal share), the City shall evaluate each proposed transferee or assignee on the basis of its development and/or qualifications and experience in the operation of facilities similar to the Development, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 7.11 applies, which City reasonably determines does not possess sufficient qualifications. An assignment and assumption agreement in form satisfactory to City’s legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Participant’s written notice requesting approval of an assignment or transfer pursuant to this Section 7.11, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Participant shall promptly furnish to City such further information as may be reasonably requested. No such approval shall be given without receipt by the City of written evidence of the consent or approval by HUD.

Because one hundred percent (100%) of moneys for site acquisition and renovation are being provided by the City, it is not contemplated that mortgages or deeds of trust, excepting for those for the City as beneficiary under this Agreement, shall be recorded as to the City during the Required Covenant Period; any additional or other mortgages, deeds of trusts or liens securing repayment shall require the prior written approval of the City Manager.

**7.12.4 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Participant and its permitted successors and assigns. Whenever the term “Participant” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**7.12.5 Assignment by City.** City may assign or transfer any of its rights or obligations under this Agreement with the approval of the Participant, which approval shall not be unreasonably withheld; provided, however, that City may assign or transfer any of its interests hereunder at any time without the consent of the Participant.

**7.13 Non-Liability of Officials and Employees of City.** No member, official, officer or employee of the City shall be personally liable to the Participant, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Participant or its successors, or on any obligations under the terms of this Agreement.

**7.14 Relationship between City and Participant.** It is hereby acknowledged that the relationship between the City and the Participant is not that of a partnership or joint venture and that City and Participant shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, including the Attachments hereto, the

City shall have not any obligations with respect to the development, operation, maintenance or management of the Development.

**7.15 City Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by the City the City Manager is authorized to act on behalf of the City unless specifically provided otherwise or the law otherwise requires.

**7.16 Real Estate Brokers.** City and Participant each represent and warrant to each other that no broker or finder is entitled to any commission or finder’s fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

**7.17 Attorneys’ Fees.** In any action among the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys’ fees (based upon the rates customarily charged by the attorneys to private clients).

**8. MISCELLANEOUS**

**8.1 Obligations Unconditional and Independent.** Notwithstanding the existence at any time of any obligation or liability of City to Participant, or any other claim by Participant against City, in connection with the Site or otherwise, Participant hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Participant’s obligations under this Agreement (including without limitation the attachments hereto), or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Participant of any of its obligations under the Development Documents.

**8.2 Notices.** All notices, demands, approvals and other communications provided for in the Development Documents shall be in writing and be delivered to the appropriate party at its address as follows:

If to Participant: Riverside Housing Development Corporation  
3985 University Avenue  
Riverside, CA 92501  
Attn: Bruce Kulpa

If to City: City of Moreno Valley  
14177 Frederick Street  
P.O. Box 6459  
Moreno Valley, CA 92552-0805  
Attention: Economic Development Director

with a copy to: City Clerk  
City of Moreno Valley  
14177 Frederick Street

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



Moreno Valley, California 92552-0805

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

**8.3 Survival of Representations and Warranties.** All representations and warranties in the Development Documents shall survive the rental of the Required Affordable Units and have been or will be relied on by City notwithstanding any investigation made by City.

**8.4 No Third Parties Benefited.** This Agreement is made for the purpose of setting forth rights and obligations of Participant and the City; no other person shall have any rights hereunder or by reason hereof. There shall be no third party beneficiaries of this Agreement.

**8.5 Binding Effect; Assignment of Obligations.** This Agreement shall bind, and shall inure to the benefit of, Participant, the City and their respective successors and assigns. Participant shall not assign any of its rights or obligations under any Development Document without the prior written consent of the City Manager, which consent may be withheld in the City Manager's sole and absolute discretion. Any such assignment without such consent shall, at City's option, be void. In connection with the foregoing consent requirement, Participant acknowledges that City relied upon Participant's particular expertise in entering this Agreement and continues to rely on such expertise to ensure the satisfactory completion of the Improvements and the use of the Required Affordable Units in conformity with this Agreement.

**8.6 Counterparts.** Any Development Document may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

**8.7 Prior Agreements; Amendments; Consents.** This Agreement (together with the other Development Documents) contains the entire agreement between City and Participant with respect to the Site, and all prior negotiations, understandings and agreements with respect to such matters are superseded by this Agreement and such other Development Documents. No modification of any Development Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 46 and Attachments 1 through 19, which constitutes the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the City, the City and the Participant, and all amendments hereto must be in writing by the appropriate authorities of the City and the Participant.

**8.8 Governing Law.** All of the Development Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California as well as the Rules

and Regulations, the HOME Regulations, as well as the laws and regulations referenced therein. Participant irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Riverside or the United States District Court of the Central District of California, as City may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement or the other Development Documents. Assuming proper service of process, Participant also waives any objection regarding personal or in rem jurisdiction or venue.

**8.9 Severability of Provisions.** No provision of any Development Document that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Development Documents are hereby declared to be severable.

**8.10 Headings; Interpretation.** Article and section headings are included in the Development Documents for convenience of reference only and shall not be used in construing the Development Documents. This Agreement shall be interpreted in a manner consistent with the public interest in assuring the continued availability of rental units at Affordable Rents to Low Income Households, enforceable by City, as provided under this Agreement.

**8.11 Conflicts.** In the event of any conflict between the provisions of this Agreement and those of any other Development Document, this Agreement shall prevail; provided however that, with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

**8.12 Time of the Essence.** Time is of the essence of all of the Development Documents.

**8.13 Conflict of Interest.** No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

**8.14 Warranty Against Payment of Consideration.** Participant warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

**PARTICIPANT:**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

**CITY:**

**CITY OF MORENO VALLEY**, a municipal corporation

By: \_\_\_\_\_  
City Manager

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

ATTACHMENT NO. 1

SITE MAP



Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 2**  
**LEGAL DESCRIPTION OF THE SITE**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 38 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-010

**ATTACHMENT NO. 3**  
**SCHEDULE OF PERFORMANCE**

For the purposes of this Schedule of Performance, the “Date of Agreement” is September 22, 2015. The City Manager may extend by not more than sixty (60) days the time under this Schedule of Performance by which any obligation of Participant shall be performed.

- |  |  |
|--|--|
| 1. <u>Satisfaction of Conditions Precedent to Closing.</u> Participant shall satisfy the Conditions Precedent to Closing.  | Not later than February 9, 2016.   |
| 2. <u>Closing.</u> The conveyance of the Site by the City to the Participant effected by the recording of the City Deed, which shall be accomplished concurrent with the recording of the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Second Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust. | Within thirty (30) days after the satisfaction of the Conditions Precedent to Closing and not later than the sixtieth (60th) day after the later to occur of (i) the Date of Agreement or (ii) the acquisition of title to the Site by the City from the Prior Owner; provided that in no event shall the Closing occur after March 9, 2016. |
| 3. <u>Commencement of Construction.</u> The Participant shall have commenced construction of the Improvements.   | Within thirty (30) days after the earlier to occur of: (i) the Closing, or (ii) the time established in this Schedule of Performance for the Closing (per item 2, above).  |
| 4. <u>Completion of Construction.</u> Participant shall complete construction of the Improvements.   | Within ninety (90) days after the earlier of (i) the commencement of construction or (ii) the time established in this Schedule of Performance for the commencement of construction of the Improvements.   |
| 5. <u>Rental Units Occupied.</u> Participant causes the Required Affordable Units to be occupied using the Prescribed Rent Levels in conformity with the Agreement.  | Within sixty (60) days after the earlier of (i) completion of construction or (ii) the time established for completion of construction in this Schedule of Performance.  |

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

ATTACHMENT NO. 4

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

TO: City of Moreno Valley
14177 Frederick Street
Moreno Valley, California 92552-0805
Attention: City Manager

The undersigned, \_\_\_\_\_, being duly authorized to execute this Certificate of Continuing Program Compliance (this "Certificate") on behalf of Riverside Housing Development Corporation, a California nonprofit public benefit corporation (the "Participant"), hereby represents and warrants that:

1. He has read and is thoroughly familiar with the provisions of the Affordable Housing Agreement (the "AHA") by and between the City and the Participant dated as of September 22, 2015, including without limitation the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Senior Deed of Trust, the Equity Share Note, the Equity Share Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust and all other attachments thereto. Capitalized terms used herein shall have the same meaning as that set forth in the AHA; and

2. As of the date of this Certificate, the following number of completed residential units at the Site: (i) are currently occupied by Very Low Income Households at Affordable Rent; (ii) are currently occupied by Lower Income Households at Affordable Rent; or (iii) are currently occupied by Moderate Income Households at Affordable Rent; or (iv) are currently vacant and being held available for occupancy by a Very Low Income Household, a Lower Income Household or a Moderate Income Household and have been so held continuously since the date a Very Low Income Household, a Lower Income Household or a Moderate Income Household vacated such unit:

Occupied at an Affordable Rent by:

Very Low Income Households (50%) \_\_\_\_\_ # of Units, Nos.:
Lower Income Households (60%) \_\_\_\_\_ # of Units, Nos.:
Moderate Income Households (120%) \_\_\_\_\_ # of Units, Nos.:

Vacant:

a. Held for occupancy by:

i. Very Low Income Households (50%) \_\_\_\_\_ # of Units, Nos.:
ii. Lower Income Households (60%) \_\_\_\_\_ # of Units, Nos.:
iii. Moderate Income Households (120%) \_\_\_\_\_ # of Units, Nos.:

b. Last occupied by:

i. Very Low Income Households (50%) \_\_\_\_\_ # of Units, Nos.:
ii. Lower Income Households (60%) \_\_\_\_\_ # of Units, Nos.:
iii. Moderate Income Households (120%) \_\_\_\_\_ # of Units, Nos.:

3. At no time since the date of filing of the last Certification of Continuing Program Compliance have less than one hundred percent (100%) of the Required Affordable Units as completed units in the Development been occupied by, or been last occupied, or have been available for occupancy by Very Low Income Households, Lower Income Households or Moderate Income Households at an Affordable Rent.

4. The Participant is not in default under the terms of the Agreement, including without limitation the attachments thereto (such as CC&Rs, the Resale Restriction Agreement, the Senior Note, the Senior Deed of Trust, the Equity Share Note, the Equity Share Deed of Trust, the Capital Recovery Note and the Capital Recovery Deed of Trust).

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

**(PARTICIPANT)**

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



**ATTACHMENT NO. 5**  
**CALCULATION OF AFFORDABLE RENTS**

**Riverside County**  
**Affordable Rent Worksheet**

(2015 Income Figures)

**1. Income Eligibility<sup>1</sup>**

The first step in determining eligibility for an affordable housing program is determining whether the family which will be purchasing or renting the housing unit meets the following income standards applicable to **Riverside** County, based upon the size of the family:

<i>Income Level</i>	<i>1 person household</i>	<i>2 person household</i>	<i>3 person household</i>	<i>4 person household</i>	<i>5 person household</i>	<i>6 person household</i>	<i>7 person household</i>	<i>8 person household</i>
<i>Extremely Low</i>	\$14,100	\$16,100	\$20,090	\$24,250	\$28,410	\$32,570	\$36,730	\$40,890
<i>Very Low</i>	\$23,450	\$26,800	\$30,150	\$33,500	\$36,200	\$38,900	\$41,550	\$44,250
<i>Lower</i>	\$37,550	\$42,900	\$48,250	\$53,600	\$57,900	\$62,200	\$66,500	\$70,800
<i>Median</i>	\$45,500	\$52,000	\$58,500	\$65,000	\$70,200	\$75,400	\$80,600	\$85,800
<i>Moderate</i>	\$54,600	\$62,400	\$70,200	\$78,000	\$84,250	\$90,500	\$96,700	\$102,950

<sup>1</sup> Based on currently effective median income of San Bernardino-Riverside County, as released by the Department of Housing and Community Development (“HCD”) by memorandum dated as of April 15, 2015 as posted to the HCD website. These median income numbers are revised annually; accordingly, affordable rents are revised annually as well. The Participant is responsible for charging rents not in excess of those amounts allowable under the AHA or, if lower, those rents allowable under the HOME Program. The Participant is encouraged to annually confirm proposed rents with the City.

## 2. Determining Affordable Rent

For **rental housing**, the second step in determining compliance with affordable housing requirements is determining whether the total rent costs payable by the tenant are within allowable amounts. Notwithstanding the setting forth in this example of affordable rents, the definition of “Affordable Rents” set forth in the body of the Agreement shall control in the event of conflict. Specifically, the TCAC practice of determining affordable rents on the basis one and one-half (1 ½) persons per bedroom shall control (as against the convention of basing household size for the purposes of computing rent, and without regard to actual occupancy, on the basis of one person for each bedroom, plus one). However, in no event shall rents exceed Low HOME rents.

For **Extremely Low Income** Households:<sup>2</sup>

- purchasing a **0 bedroom** house, monthly housing payments may not exceed **\$341.25**
- purchasing a **1 bedroom** house, monthly housing payments may not exceed **\$390.00**
- purchasing a **2 bedroom** house, monthly housing payments may not exceed **\$438.75**
- purchasing a **3 bedroom** house, monthly housing payments may not exceed **\$487.50**
- purchasing a **4 bedroom** house, monthly housing payments may not exceed **\$526.50**
- purchasing a **5 bedroom** house, monthly housing payments may not exceed **\$565.50**

For **Very Low Income** Households:<sup>3</sup>

- purchasing a **0 bedroom** house, monthly housing payments may not exceed **\$568.75**
- purchasing a **1 bedroom** house, monthly housing payments may not exceed **\$650.00**
- purchasing a **2 bedroom** house, monthly housing payments may not exceed **\$731.25**
- purchasing a **3 bedroom** house, monthly housing payments may not exceed **\$812.50**
- purchasing a **4 bedroom** house, monthly housing payments may not exceed **\$877.50**
- purchasing a **5 bedroom** house, monthly housing payments may not exceed **\$942.50**

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<sup>2</sup> Affordable Housing Cost for Extremely Low Income Households is the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50052.5 (b)(1).

<sup>3</sup> Affordable Housing Cost for Very Low Income Households is the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50052.5 (b)(2).

For **Lower Income** Households:<sup>4</sup>

- renting a **0 bedroom** unit, monthly rent may not exceed **\$682.50**
- renting a **1 bedroom** unit, monthly rent may not exceed **\$780.00**
- renting a **2 bedroom** unit, monthly rent may not exceed **\$877.50**
- renting a **3 bedroom** unit, monthly rent may not exceed **\$975.00**
- renting a **4 bedroom** unit, monthly rent may not exceed **\$1,053.00**
- renting a **5 bedroom** unit, monthly rent may not exceed **\$1,131.00**

In addition, for any Lower Income Household whose income falls within the following guidelines, it is **optional** for the agency to require that **affordable rent not exceed 30 percent of the gross income of the household**:<sup>5</sup>

- **1 person households** whose income is between **\$27,300 and \$37,550**
- **2 person households** whose income is between **\$31,200 and \$42,900**
- **3 person households** whose income is between **\$35,100 and \$48,250**
- **4 person households** whose income is between **\$39,000 and \$53,600**
- **5 person households** whose income is between **\$42,120 and \$57,900**
- **6 person households** whose income is between **\$45,240 and \$62,200**
- **7 person households** whose income is between **\$48,360 and \$66,500**
- **8 person households** whose income is between **\$51,480 and \$70,800**

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<sup>4</sup> Affordable Rent for Lower Income Households is the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053 (b)(3).

<sup>5</sup> Health and Safety Code Section 50053 (b)(3).

For **Moderate Income** Households:<sup>6</sup>

- renting a **0 bedroom** unit, monthly rent may not exceed **\$1,251.25**
- renting a **1 bedroom** unit, monthly rent may not exceed **\$1,430.00**
- renting a **2 bedroom** unit, monthly rent may not exceed **\$1,608.75**
- renting a **3 bedroom** unit, monthly rent may not exceed **\$1,787.50**
- renting a **4 bedroom** unit, monthly rent may not exceed **\$1,930.50**
- renting a **5 bedroom** unit, monthly rent may not exceed **\$2,073.50**

In addition, for any Moderate Income Household whose income falls within the following guidelines, it is **optional** for the agency to require that **affordable rent not exceed 30 percent of the gross income of the household:**<sup>7</sup>

- **1 person households** whose income is between **\$50,050 and \$54,600**
- **2 person households** whose income is between **\$57,200 and \$62,400**
- **3 person households** whose income is between **\$64,350 and \$70,200**
- **4 person households** whose income is between **\$71,500 and \$78,000**
- **5 person households** whose income is between **\$77,220 and \$84,250**
- **6 person households** whose income is between **\$82,940 and \$90,500**
- **7 person households** whose income is between **\$88,660 and \$96,700**
- **8 person households** whose income is between **\$94,380 and \$102,950**

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<sup>6</sup> Affordable Rent for Moderate Income Households is the product of 30 percent times 110 percent of area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053 (b)(4).

<sup>7</sup> Health and Safety Code Section 50053 (b) (4).

**For purposes of determining Affordable Rent, “Rent”** is an average of estimated housing costs for the next twelve months. **“Rent”** includes the total of monthly payments for all of the following:<sup>8</sup>

- Use and occupancy of a housing unit and land and facilities associated therewith.
- Any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
- A reasonable allowance for utilities not included in the above costs, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuels. Utilities does not include telephone service. Such an allowance shall take into consideration the cost of an adequate level of service.
- Possessory interest taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than the lessor.
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<sup>8</sup> 25 California Code of Regulations Section 6918.

## ATTACHMENT NO. 6

## SENIOR NOTE

\$177,000.00

Moreno Valley, California

\_\_\_\_\_ 1, 201\_

Property Address: 22899 Allies Place  
Moreno Valley, CA 92551

Maturity: July 1, 2046

**FOR VALUE RECEIVED**, the undersigned (“Maker”) promises to pay to the City of Moreno Valley (“Holder”) at 14177 Frederick Street, Moreno Valley, CA 92552, or at such other address as Holder may direct from time to time in writing, the sum of One Hundred Seventy-Seven Thousand Dollars (\$177,000.00) (the “Senior Note Amount”). All sums hereunder shall be payable in lawful money of the United States of America.

**1. Loan Agreement.** This Senior Note (the “Senior Note”) is made and delivered pursuant to and in implementation of the Affordable Housing Agreement entered by and between the Holder and the Maker dated as of September 22, 2015 (the “Agreement”), a copy of which is on file as a public record with the Holder. The Agreement is incorporated herein by this reference. The Maker acknowledges that but for the execution of this Senior Note, the Holder would not enter into the Agreement or make the loans contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

**2. Interest Rate.** The Senior Amount shall bear interest at the rate of zero percent (0%).

**3. Payments; Time of Payment.** Maker shall make monthly payments to Holder on the first day of each month commencing January 1, 2017, and continuing on the first day of each month thereafter in each Year to and including July 1, 2046 in the amount of Zero Dollars (\$0.00); provided that the entire balance under this Senior Note shall be due and payable in full on July 1, 2046.

**4. Acceleration.** The whole of the Senior Loan Amount shall, at the election of the City, become due and be immediately payable to the Holder by the Maker upon the occurrence of any of the following events: (a) the sale or transfer of the Site, including, without limitation, the lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (i) the rental of the Required Affordable Units at Affordable Rent to Low Income Households, or (ii) the transfer of the Site permitted by the Agreement and as to which the prior written approval of the City has been obtained. The failure by Holder to elect to accelerate upon the occurrence of an event within a particular time after the occurrence of such event shall not operate as a waiver of Holder’s right to accelerate and to declare all amounts due hereunder to be immediately payable.

**5. Security for Note.** This Senior Note shall be secured by a first deed of trust and rider thereto of even date herewith encumbering the Site (“Senior Deed of Trust”), executed by Maker, as trustor, in favor of Holder, as beneficiary.

**6. Prepayment of Note.** Maker may prepay this Note to Holder, provided that any prepayment must be in full and not in part. Prepayment shall not, however, release Maker from the requirements of CC&Rs, the Resale Restriction Agreement, the Equity Share Note, the Capital Recovery Note, or the other provisions of the Agreement. In addition, prepayment shall be treated in the same manner as a refinancing of the Site.

**7. Holder May Assign.** Holder may, at its option, assign its right to receive payment under this Senior Note without necessity of obtaining the consent of the Maker.

**8. Maker Assignment Prohibited.** In no event shall Maker assign or transfer any portion of this Senior Note, or its obligations as to the Senior Loan Amount and/or under the Agreement without the prior express written consent of the Holder.

**9. Joint and Several.** The undersigned, if more than one person, shall be jointly and severally liable hereunder.

**10. Attorneys’ Fees and Costs.** In the event that any action is instituted to enforce payment under this Senior Note, the parties agree the non-prevailing party shall be responsible for and shall pay to the prevailing party all court costs and all attorneys’ fees (based upon the rates customarily charged by the attorneys to private clients) incurred in enforcing this Senior Note.

**11. Amendments.** This Senior Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Senior Note so as to become a permanent part thereof.

**12. Maker’s Waivers.** Maker waives any rights to require the Holder to: (a) demand payment of amounts due (known as “presentment”), (b) give notice that amounts due have not been paid (known as “notice of dishonor”), and (c) obtain an official certification of nonpayment (known as “protest”).

**13. Notice.** Any notice that must be given to Maker under this Senior Note shall be given by personal delivery or by mailing it by certified mail addressed to Maker at the Property address above or such other address as Maker shall direct from time to time in writing. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment. Any notice to Holder shall be given by certified mail at the address stated above.

**14. Successors Bound.** This Senior Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, Maker has executed this Senior Note as of the date set forth below.

**MAKER:**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**  
a California nonprofit public benefit corporation

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



**ATTACHMENT NO. 7**  
**SCOPE OF WORK: BUDGET**

Each Unit shall consist of not less than 600 square feet of living space (or, if greater, the size of each Unit as of the Date of Agreement. The work undertaken shall include, without limitation, full renovation of kitchens and bathrooms, including new cabinetry and counterparts, new drywall and texture throughout, including firewall as required; exterior improvements and such additional improvements and features as are described herein. Participant shall also be responsible for demolition, grubbing, and disposal as may be necessary.

# Riverside Housing Development Corporation

22899 Allies Place, Moreno Valley



**INSTRUCTION SERVICES INC**

Date: 9/9/15

#	Discription	Cost	Notes
			Notes
1	Plan Check & Inspection fees for rehab	\$0.00	Approved plans and reports will be part of the scope of work
2	Rehabilitation permit	\$0.00	
3	New Roof & Trusses Permit	\$0.00	
4	Laundry Room/Storage Room & Garage Construction Permit	\$0.00	
5	Relocate Electrical Panel permit	\$0.00	
6	Grading Permit	\$0.00	
7	Civil Engineer Fees	\$0.00	
8	Structural Engineer Fees	\$0.00	
9	Architectural Fees	\$0.00	
	<b>Demolition - Included but not limited to</b>		Notes
10	Remove trees, grass/shrubs & misc. landscape	\$2,735.00	
11	Remove concrete walkways	\$547.00	remove asphalt to property line to accommodate ADA lane of travel
12	Remove 42 x 22 asphalt Garage foot print & 2' out side footing	\$820.00	remove asphalt to property line to accommodate ADA lane of travel
13	Remove damaged wood siding & stucco as needed	\$1,094.00	
14	Remove front entry doors & hardware	\$438.00	
15	Remove existing light fixtures	\$109.00	
16	Remove flooring	\$219.00	
17	Remove all ceilings and walls through out each unit. Remove Ship Lap and Beams (iid)	\$5,469.00	
18	Remove all drywall (See Asbestos report for Protocol)	\$1,094.00	
19	Remove cabinets	\$1,094.00	
20	Remove plumbing fixtures	\$1,094.00	
21	Remove water and sewer lines/angle stops	\$219.00	
22	Remove water heater	\$438.00	
23	Remove wall a/c and heater equipment	\$219.00	
24	Remove sinks	\$219.00	
25	Remove countertops	\$328.00	
26	Remove garbage disposals	\$109.00	
27	Remove existing switches/plugs/plates	\$109.00	
28	Remove closet doors/shelving	\$219.00	
29	Remove existing flat roof & fascia	\$5,469.00	
30	Remove all existing plumbing lines in walls and existing electrical lines in walls	\$2,735.00	
31	Remove appliances	\$0.00	
32	Remove interior doors & hardware	\$438.00	
33	Remove existing laundry room equipment	\$273.00	
34	Remove all cables, wires and lines	\$109.00	
35	Remove existing fencing	\$328.00	
36	Haul off debris	\$875.00	
	<b>Grading</b>		Notes
37	Grade yards for proper drainage	\$547.00	
38	Install yard drains	\$547.00	
39	Grade for slab for Laundry/Storage & Garages	\$1,094.00	
	<b>Framing</b>		Notes
40	Frame laundry room/storage room & garages	\$6,016.00	
41	Revised interior, framing and door hardware for (4) units	\$15,200.00	
42	Convert flat roof to truss roof, install new fascia. 24" Eaves on trusses	\$8,204.00	
43	Frame in all door openings and window openings & attic access	\$875.00	Frame all units to accommodate ADA requirement per plan
44	Frame in HVAC closet in hallway at end of bedroom closet	\$273.00	
45	Install backing in wet areas to accommodate hardware	\$0.00	
46	Replace any damaged framing for backing to accommodate hardware and adaptable features	\$0.00	
47	Install new firewalls between units & in attics	\$656.00	
48	Frame out tub clean out access in bedroom closet	\$0.00	
49	Add Pop-Outs to front of building facing street - design to be determined	\$1,641.00	
50	Frame Closet in storage area for water heaters	\$438.00	
51	Termite Report & Mold Report Repairs	\$0.00	
52	Frame in window to accommodate (4 x 4 vinyl)	\$164.00	sill height 44in
53	Revised exterior; framing, garage height, path of travel, panic bare striker plates and notification pa	\$6,720.00	
54	Material Increase (Schedule Gap)	\$9,328.00	
	<b>Plumbing</b>		Notes
55	Replace all water lines from the meter in	\$8,883.00	Replacement fixtures shall meet current Green Code and Energy code
56	turned in	\$1,094.00	
57	Locate and raise all sewer clean outs	\$438.00	
58	Install new pressure regulators/ball valves	\$1,313.00	
59	Install new exterior hose bibs	\$0.00	
60	Install new angle stops/supply lines	\$0.00	
61	Replace all whole unit plumbing pipes in walls	1 \$5,807.00	R&R damaged sewer, drains lines and vent lines

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



62	Install new sinks	\$1,094.00	
63	Install new garbage disposals	\$656.00	
64	Install dishwasher hook-ups	\$0.00	
65	Install new p-traps	\$0.00	
66	Install new toilets & seats	\$1,094.00	
67	Install new water heaters insuring all are to code (50 gallon) 1 for tenants, 1 for laundry room	\$3,281.00	
68	Install new kitchen plumbing fixtures	\$656.00	
69	Install new bathroom plumbing fixtures (tub valves will now be on bedroom wall) with access panel	\$0.00	
70	Install new tub/shower trim includes valves & tub surround	\$4,157.00	
71	Cap any plumbing in wall at old laundry room	\$0.00	
72	Install new laundry hook-ups - 2 washer/dryer vented	\$0.00	
73	Replace old gas lines	\$3,281.00	
74	N/A	\$0.00	
	<b>Electrical</b>		Notes
75	Electrical system update with new wires to code, include new wiring for laundry, storage and garage	\$10,391.00	electrical fixtures, receptacles, and switches shall meet Energy code and
76	Install new switches, plugs and plates (switch in bathroom will turn on both light & fan at all times)	\$547.00	
77	Install new cable runs	\$0.00	
78	Install hardwired smoke detectors per code (includes 1 w/carbon monoxide detector in each unit)	\$656.00	
79	Ring out electrical system (R.N.I.)	\$0.00	
80	Install ceiling fan box with switch in each bedroom	\$0.00	
81	Install electrical for security lighting	\$0.00	
82	Test doorbells (R.N.I.)	\$0.00	
83	Install GFI's in kitchens/bathrooms/exteriors	\$350.00	
84	Install dedicated circuit for garbage disposal	\$0.00	
85	Install bathroom exhaust fans	\$438.00	
86	Install CAT 5 and pull all cable and telephone wires as necessary to smart box in bedroom	\$0.00	
87	Relocate electrical service panel	\$0.00	
88	Upgrade existing service panel	\$0.00	
89	Install house service panel	\$0.00	
90	Install anti arch breaker	\$0.00	
91	Install house meter	\$0.00	
92	Install electrical for irrigation	\$0.00	
93	Install door bells	\$0.00	
94	N/A	\$0.00	
95	N/A	\$0.00	
	<b>HVAC</b>		Notes
96	Install new 16 seer HVAC equipment in newly constructed hall closet	\$2,620.00	
97	Install new HVAC ducting	\$2,188.00	
98	Install new t-stats	\$0.00	
99	Install new HVAC registers	\$0.00	
100	Install new line sets	\$0.00	
101	Compressors to be placed on pad by bedroom window.	\$0.00	
102	N/A	\$0.00	
103	N/A	\$0.00	
	<b>HERS</b>		Notes
104	Test HVAC systems for Title 24 compliance	\$492.00	
105	N/A	\$0.00	
106	N/A	\$0.00	
	<b>Roofing</b>		Notes
107	Install new roofing and trusses, 24" Eaves on trusses, 24" on carter	\$8,751.00	
108	Install new roofing on garage	\$3,281.00	
109	Radiant barrier in attic	\$0.00	
110	Install Solar powered Attic Fans	\$1,094.00	
111	Replace all existing roof vent screens, screens to match	\$438.00	
112	N/A	\$0.00	
113	N/A	\$0.00	
	<b>Doors</b>		Notes
114	Install new entry doors with one way peep hole at standard height, dead bolt length to be 1"	\$1,750.00	
115	Install new interior doors	\$1,531.00	
116	Install new bypass closet doors	\$1,094.00	
117	Install new laundry/storage/water heater room door (laundry room door to have window)	\$1,094.00	
118	Install attic access door	\$0.00	
119	N/A	\$0.00	
	<b>Insulation</b>		Notes
120	Install insulation R42 in lids	\$1,969.00	
121	Install insulation R19 in wells	\$3,828.00	
122	N/A	\$0.00	
123	N/A	\$0.00	
	<b>Moldings</b>		Notes
124	Install new door casing	\$1,313.00	
125	Install new baseboard and/or shoe	\$1,750.00	
126	N/A	\$0.00	
127	N/A	\$0.00	

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

128	N/A	\$0.00	Notes
<b>Windows</b>			
129	Install new dual pane windows with screens (4 x 4) (Low-E)	\$6,563.00	
130	All windows are to be sealed, locks & windows working correctly	\$0.00	
131	N/A	\$0.00	
132	N/A	\$0.00	Notes
<b>Drywall</b>			
133	Install new drywall and texture (light knockdown) - 1 hour Firewall	\$7,657.00	
134	Texture ceilings (light knockdown)	\$0.00	
135	Install Green Board in all wet areas	\$0.00	
136	N/A	\$0.00	Notes
<b>Stucco</b>			
137	Stucco existing building complete, Include laundry/storage room & garages	\$8,204.00	
138	Add Pop Out foam details to exterior - design to be determined	\$0.00	
139	N/A	\$0.00	
140	N/A	\$0.00	
141	N/A	\$0.00	Notes
<b>Cabinetry</b>			
142	Install new cabinets in kitchens and bathrooms	\$21,330.00	
143	Install HVAC cabinet in hallway	\$0.00	
144	N/A	\$0.00	
145	N/A	\$0.00	Notes
<b>Paint</b>			
146	Paint interior of apartments and garage as per specs	\$3,281.00	
147	Hydro blast & scrape off all peeling or cracked paint on exterior	\$0.00	
148	Paint exterior of apartments and garage as per specs	\$2,735.00	
149	Paint trash enclosure gates	\$547.00	
150	Paint wrought iron	\$2,735.00	
151	Touch up painting after construction complete	\$0.00	
152	N/A	\$0.00	
153	N/A	\$0.00	
154	N/A	\$0.00	Notes
<b>Door Hardware - Bright Brass Finish</b>			
155	Install new interior door hardware (Bright Brass Finish)	\$656.00	
156	Install new entry door hardware	\$656.00	
157	Install new laundry / storage room hardware (keyed per Property Management Standard)	\$219.00	
158	All to be keyed per PROPERTY MANAGEMENT'S SPECS	\$0.00	
159	N/A	\$0.00	
160	N/A	\$0.00	Notes
<b>Bath Accessories</b>			
161	Install new towel bars/toilet paper holders	\$438.00	
162	Install new vanity mirrors	\$656.00	
163	Install new medicine cabinets	\$438.00	
164	Install shower rods	\$0.00	
165	N/A	\$0.00	
166	N/A	\$0.00	Notes
<b>Light Fixtures</b>			
167	Install new ceiling fans with light kits at bedrooms	\$1,313.00	
168	Install new ceiling fans with light kits at living rooms	\$656.00	
169	Install new security lights - match existing buildings	\$328.00	
170	Install new light at address numbers or lighted address signs	\$438.00	
171	Install new light bars at bathrooms	\$219.00	
172	Install new hall light fixtures	\$219.00	
173	Install exterior porch lights	\$328.00	
174	Install new fluorescent kitchen lights	\$856.00	
175	Install 4 can lights in kitchen area	\$1,750.00	
176	Install new fluorescent laundry room/storage room light fixture	\$219.00	
177	Install new laundry room/storage room light fixture	\$109.00	
178	N/A	\$0.00	
179	N/A	\$0.00	Notes
<b>Counter Tops</b>			
180	Install Formica Kitchen counter tops (white)	\$2,188.00	
181	Install Formica Bathroom counter tops	\$1,094.00	
182	Install new silestone kitchen counters - In lieu of Formica	\$10,938.00	
183	Install new silestone bathroom counters - In lieu of Formica	\$2,188.00	
184	N/A	\$0.00	
185	N/A	\$0.00	Notes
<b>Tub/Shower</b>			
186	Install new tubs - valves will now back to bedroom wall	\$3,500.00	
187	Install complete tub kit, including surround	\$2,188.00	
188	Caulk all joint areas, around base of tubs/toilets/surrounds	\$0.00	
189	N/A	\$0.00	
190	N/A	\$0.00	

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



			Notes
<b>Flooring</b>			
191	Install new carpet - Manufacturer to be Mohawk (Shaw) in Bedroom only	\$1,969.00	
192	Bathroom	\$9,844.00	
193	Seal all tile	\$0.00	
194	N/A	\$0.00	
195	N/A	\$0.00	
196	N/A	\$0.00	
<b>Window Coverings</b>			
197	Install new vertical blinds (white)	\$1,094.00	
198	N/A	\$0.00	
199	N/A	\$0.00	
<b>Garage Doors</b>			
200	Install new roll-up garage doors	\$2,188.00	
201	Install garage door opener	\$1,313.00	
202	Install garage door opener manual release/key pad release - No manual release w/elect opener	\$656.00	
203	Provide 6 automatic garage door openers	\$0.00	
204	N/A	\$0.00	
<b>Sheet Metal</b>			
206	baked on enamel	\$2,406.00	
206	install new vents for range hoods (vented to outside)	\$656.00	
207	N/A	\$0.00	
208	N/A	\$0.00	
<b>Mailboxes</b>			
209	Install mailboxes at left front (facing) unit - close to 22889 Allies	\$438.00	
210	N/A	\$0.00	
211	N/A	\$0.00	
<b>Asphalt</b>			
212	Install approx. 22 x 42 area for asphalt at garages	\$3,281.00	
213		\$0.00	
<b>Concrete</b>			
214	Pour new concrete walkway	\$2,625.00	Exterior walkways shall me accessibility requirements
215	Foundation for Laundry Rm/Storage Rm, Garage & parking area	\$4,375.00	
216		\$0.00	
<b>Wood Fencing</b>			
217	Install dogwood fence in front of units (48' x 2) each side	\$1,750.00	
218	N/A	\$0.00	
219	N/A	\$0.00	
<b>Wrought Iron</b>			
220	Install new wrought iron fencing with 4 man gates, look at 22898 Allies - match	\$12,032.00	
221	Install security cages over all Irrigation valves and AC compressors	\$438.00	
222	Install Knox Boxes (2)	\$0.00	
223	Trash Enclosure Gates	\$1,531.00	Entry gates shall meet Accessibility requirements for maneuvering clearance, landing, hdwo, etc...
224	N/A	\$0.00	
<b>Landscape</b>			
225	Install elite tall fescue sod (approx. 20 x 20)	\$875.00	
226	2" layer of Mulch & weed barrier	\$219.00	
227	Brick Planter edge	\$656.00	
228	Flats of ground cover, 1 planter every 6' in open areas, every 3' in planters	\$219.00	
229	5-gallon roses 24 ea.	\$219.00	
230	15-gallon boxwoods 17 ea.	\$295.00	
231	Install 1x4 plastic header board between iron fence and boxwood planters entire project	\$219.00	
232	Install new irrigation system, Includes controller, lines, valves and sprinklers, use bubblers	\$1,351.00	
233	N/A	\$0.00	
234	N/A	\$0.00	
235	N/A	\$0.00	
<b>Appliances</b>			
236	Install new appliances (self-cleaning stove & Micro Hood)	\$6,228.00	
237	Install dishwasher	\$2,188.00	
238	N/A	\$0.00	
<b>Fire Extinguishers</b>			
239	Install Fire Extinguishers with locking cabinets	\$219.00	
240	N/A	\$0.00	
<b>Masonry</b>			
241	Build Trash Enclosure	\$12,220.00	
242	N/A	\$0.00	
<b>Prep &amp; Clean</b>			
243	Prep & Finish cleaning units	\$0.00	
244	N/A	\$0.00	
245	N/A	\$0.00	
246	P & O	\$0.00	
	<b>Sub-Total</b>	\$312,220.00	

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



**ATTACHMENT NO. 8  
CERTIFICATE OF COMPLETION**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Empty rectangular box for recording details.

(Space Above for Recorder's Use Only)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

**CERTIFICATE OF COMPLETION**

**THIS CERTIFICATE OF COMPLETION** (the "Certificate") is made by the **CITY OF MORENO VALLEY**, a public body, corporate and politic (the "City"), in favor of **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation (the "Participant"), as of the date set forth below.

***RECITALS***

A. The City and the Participant have entered into that certain Affordable Housing Agreement (the "AHA") dated as of September 22, 2015 concerning the redevelopment of certain real property situated in the City of Moreno Valley, California, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Site").

B. As referenced in Section 4.13 of the AHA, the City is to furnish the Participant or its successors with a Certificate of Completion upon completion of construction of the "Improvements" (as defined in Section 1.1 of the AHA), which Certificate is required to be in such form as to permit it to be recorded in the Recorder's Office of Riverside County. This Certificate is conclusive determination of satisfactory completion of the construction and development required by the AHA.

C. City has conclusively determined that the construction and development of the Development has been satisfactorily completed.

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**NOW, THEREFORE**, City hereby certifies as follows:

- 1. City does hereby certify that the Improvements to be constructed by the Participant have been fully and satisfactorily completed in full conformance with the AHA.
- 2. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation of Participant to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance construction work on the Site, or any part thereof.
- 3. This Certificate shall not constitute evidence of Participant’s compliance with those covenants in the AHA that survive the issuance of this Certificate.
- 4. This Certificate is not a Notice of Completion as referred to in California Civil Code Section 3093.
- 5. Nothing contained in this instrument shall modify in any other way any other provisions of the AHA (including without limitation the attachments thereto).

**IN WITNESS WHEREOF**, City has executed this Certificate of Completion this \_\_\_ day of \_\_\_\_\_, 201\_\_.

**CITY OF MORENO VALLEY**, a public body,  
corporate and politic

By: \_\_\_\_\_  
City Manager

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



**EXHIBIT “A” TO ATTACHMENT NO. 8****LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 38 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-010

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

ATTACHMENT NO. 9

CC&RS

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805  
Attn: City Manager

(Space above for Recorder's Use.)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

REGULATORY AGREEMENT

These Covenants, Conditions and Restrictions, herein sometimes referred to as these "CC&Rs" or "Declaration" or "Regulatory Agreement" are made by the signatories hereto.

RECITALS

WHEREAS, each of the CITY OF MORENO VALLEY, a municipal corporation ("City"), and RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation ("Participant") is a party to this Declaration. The City and the Participant are sometimes collectively referred to herein as the "Declarants".

WHEREAS, the City and the Participant have entered into that certain unrecorded Affordable Housing Agreement dated as of September 22, 2015 (the "AHA") for the improvement and development of certain real property described in Exhibit "A" (to which these CC&Rs are attached) as the "Site," a legal description of which is attached hereto as Exhibit "A"), which AHA provides for the recordation of this Regulatory Agreement. The AHA is incorporated herein by this reference and any capitalized term not defined herein shall have the meaning established therefor in the AHA.

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**WHEREAS**, this Regulatory Agreement establishes a plan for the improvement, development and maintenance of the Site, for the benefit of the Project Area, as well as the rest of the City.

**WHEREAS**, City is the recipient of moneys from the federal government pursuant to the HOME Investment Partnerships Program (“HOME” or “HOME Program”) from the United States Department of Housing and Urban Development (“HUD”).

**WHEREAS**, City has determined to make certain moneys allocated to it under the HOME Program (“HOME Moneys”) available to Participant pursuant to the AHA, including the HOME Regulations and all provisions hereof.

**WHEREAS**, Participant has acquired from a private party (“Prior Owner”) of one four (4)-unit apartment building located at 22899 Allies Place in the City of Moreno Valley (the “Site”), as more particularly described in the Map (Attachment No. 1) and the Legal Description of the Site (Attachment No. 2.) as affixed to the AHA.

**WHEREAS**, under the AHA, City will acquire the Site, or reimburse Participant for the Site, provided that Participant executes and delivers to City those promissory notes, deeds of trusts, covenants and regulatory agreements as more particularly set forth herein. Participant shall thereupon acquire or reacquire an interest in the Site and shall thereupon renovate and rehabilitate the existing four (4) dwelling units on the Site, whereupon the Participant shall rent each of such four (4) dwelling units to “Low Income Households” at “Affordable Rent” as those terms are defined below. Such development is intended to implement the City’s affordable housing goals.

**WHEREAS**, all of the units at the Site shall be rented at “Affordable Rent” throughout the “Required Covenant Period” (as defined below). All of the undertakings of the Participant to rent the four (4) Units at the Site at Affordable Rent for Low Income Households are material to this Agreement and but for those undertakings by the Participant and the City would not have entered into the AHA.

**WHEREAS**, the AHA sets forth certain restrictive covenants applicable to the Site, particularly the use of the Site for the provision of rental housing units available to Low Income Households at Affordable Rents as those terms are defined therein.

**WHEREAS**, City and Participant wish to adopt this Regulatory Agreement to further govern the use of the Site in conjunction and along with the AHA and to ensure that the City provides an affordable housing resource that would conform to the provisions of Section 33413 of the California Health and Safety Code.

**NOW, THEREFORE**, the City and the Participant (the latter as owner of real property interests described hereinabove located within the corporate limits of the City), declare that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the Covenants, Conditions and Restrictions hereinafter set forth expressly and exclusively for the use and benefit of said property, and the City. Each and all of the restrictions, limitations, conditions, covenants, liens, reservations and charges herein contained shall run with the land and be recorded on the property title and shall be binding on Declarants, their grantees, successors, heirs, executors, administrators, devisees or assigns, and all subsequent owners of all or any part of the Site.

## ARTICLE I DEFINITIONS

The definitions provided herein shall be applicable to this Declaration and also to any amendment or supplemental Declaration (unless the context implicitly or explicitly shall prohibit), recorded against the Site pursuant to the provision of this Declaration.

Section 1. “Affordable Housing Project” means an affordable housing project operated in conformity with this Regulatory Agreement throughout the Required Covenant Period.

Section 2. “Affordable Rent” means an amount equal to the maximum amount of out of pocket housing cost to be charged monthly by Participant and paid by each of the eligible Very Low and Low Income Households for each of the Housing Units at the Project as determined and calculated pursuant to the affordable rent and the rent limitations as determined and published from time to time by TCAC; in the event TCAC ceases to function or to determine affordable rents, then such affordable rents shall be determined by the City Manager, acting on behalf of the City, in a manner substantially consistent with the method under which affordable rents were determined by TCAC. For purposes of Affordable Rent, the monthly housing payment means the total of monthly payments by each tenant household (inclusive of any and all payments attributable to Section 8 housing assistance, other rental subsidies, or other public subsidies, if any) of a Housing Unit for use and occupancy of a Housing Unit and facilities associated therewith, including a reasonable allowance for utilities for an adequate level of service.

Section 3. [Reserved].

Section 4 “Approved Housing Project” means all improvements as provided to be developed by Participant under the AHA. The Approved Housing Project must be completed in strict conformity with all specifications contained in or referred to in the AHA.

Section 5. “Area” means the Riverside-San Bernardino Primary Metropolitan Statistical Area, as periodically defined by HUD.

Section 6. [Reserved].

Section 7. [Reserved].

Section 8. “Calculation of Affordable Rents” means the worksheet substantially in the form of Attachment No. 5 to the AHA.

Section 9. “Certificate” or “Certification” is defined in Section 3 of Article II hereof.

Section 10. “City” means and refers to the City of Moreno Valley, a municipal corporation.

Section 11. “City Code” means and refers to the City of Moreno Valley Municipal Code as revised from time to time.

Section 12. “Common Areas” means all areas on the Site that are open or accessible to all tenants of the Site (such as grounds, but excluding buildings).

Section 13. “Gross Income” means all payments from all sources received by a person (together with the gross income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) whether in cash or in kind as calculated pursuant to the Department of Housing and Urban Development (“HUD”) Regulations (24 C.F.R. § 813) in effect as of the Date of Agreement.

Section 14. “HOME Program” means a program operated by the City to assist the provision of affordable housing in conformance with the HOME Regulations.

Section 15. “HOME Regulations” means those regulations set forth at 24 C.F.R., Part 92, as such regulations may be revised from time to time. The HOME Regulations shall, for purposes of this Agreement (including without limitation the attachments hereto) be deemed to include Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, as amended.

Section 16. “HOME Requirements” means limitations on household income and/or household size as established by the HOME Regulations.

Section 17. “HUD” means the United States Department of Housing and Urban Development.

Section 18. “Low Income Households” or “Lower Income Households” means Low Income Households whose Adjusted Income does not exceed eighty percent (80%) of Median Income for the Area as determined by the United States Department of Housing and Urban Development from time to time and as set forth in Health and Safety Code Section 50079.5.

Section 19. “Median Income for the Area” means the median income for the Area as most recently determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or, if programs under Section 8 are terminated, Median Income for the Area determined under the method used by the Secretary prior to such termination.

Section 20. “Regulatory Agreement” means this Regulatory Agreement and any amendments, modifications or supplements which may also be referred to herein as these “CC&Rs” or this “Declaration.”

Section 21. “Rental Project” means the four (4) unit residential rental development on the Site.

Section 22. “Required Affordable Unit” means a dwelling unit in the Rental Project, as rehabilitated or reconstructed under the AHA, and available to, occupied by, or held vacant for occupancy only by tenants qualifying as Very Low Income Households and, as applicable, Low Income Households and rented at Affordable Rent.

Section 23. “Required Covenant Period” means the period commencing on the date this Regulatory Agreement is recorded and ending as of July 1, 2071.

Section 24. “Rules and Regulations” means each of: (i) Health and Safety Code Sections 50052.5, 50053 and 50105; (ii) the Davis-Bacon Act (40 U.S.C. 3141 et seq.); (iii) Community Development Block Grant (CDBG) program as authorized under the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq. (“HCD Act”) and the regulations promulgated

thereunder at 24 C.F.R. 570; (iv) The Housing and Economic Recovery Act of 2008 (Public Law 110-289) (“HERA”); (v) The American Reinvestment and Recovery Act of 2009 (Public Law 111-005) (the “Recovery Act”); (vi) Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 [Docket No. FR 5321-N-01] (the “NSP2 NOFA”); (vii) the Community Development Block Grant (CDBG) program as authorized under the Public Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq. (“HCD Act”) as amplified by regulations set forth at 24 C.F.R. 570; (viii) the Housing and Economic Recovery Act of 2008 (Public Law 110-289) (“HERA”); (ix) the American Reinvestment and Recovery Act of 2009 (Public Law 111-005) (the “Recovery Act”); (x) the Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 [Docket No. FR 5321-N-01] (the “NSP2 NOFA”); (xi) the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 C.F.R. Part 58; (xii) City’s Final Neighborhood Stabilization Program as amended by Substantial Amendment to the City of Moreno Valley’s 2008-2009 Annual Action Plan, as adopted November 25, 2008; (xiii) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010), including regulations cited at 75 FR 64322 (“NSP3”); (xiv) the Notice of Funding Availability (NOFA) for NSP3 (the “NSP3 NOFA”); (xv) the Flood Disaster Protection Act of 1973 (P.L. 93-2234) for compliance in regard to the sale, lease, or other transfer of land acquired, cleared or improved under the terms of this Agreement; (xvi) the Clean Air Act, as amended (42 U.S.C. 1857, et seq.); (xvii) the Water Pollution Control Act, as amended, 33 U.S.C. 1251, et. seq., as amended 1318 relating to the inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; (xviii) the Environmental Protection Agency Regulations pursuant to 40 C.F.R., Part 50, as amended; (xix) Labor Standards (29 CFR Parts 3.5 and 5a) pertaining to contracts and applicable requirements of the regulations of the Division of Labor; (xx) the Drug Free Workplace Act of 1988; (xxi) Public Law 101-144, Section 519 (the 1990 HUD Appropriation Act); (xxii) the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470); (xxiii) federal regulations requiring that minority and women’s businesses be afforded opportunities to participate in the performance of this Agreement; (xxiv) as to conflicts of interest: (a) Participant agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following: (1) Participant shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds; (2) no employee, officer or agent of Participant shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved; (3) no covered persons who exercise or have exercised any functions or responsibilities with respect to NSP-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the NSP-assisted activity, or with respect to the proceeds from the NSP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of City, Participant, or any designated public agency; (xxv) Participant shall comply with federal regulations concerning lobbying; (xxvi) 42 U.S.C. Section 5309 (nondiscrimination); and (xxvii) to the extent applicable, including a Section 3 Clause in each construction contract.

Section 25. “Site” means all of the real property and appurtenances as described above, including all structures and other improvements thereon, and those hereafter constructed.



Section 26. “TCAC” means the California Tax Credit Allocation Committee, the allocating agency for Tax Credits in California.

Section 27. “Tax Credits” means federal 9% Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, et seq.

Section 28. “Unit” means a dwelling unit on the Rental Project.

Section 29. “Very Low Income Households” means Very Low Income Households whose Adjusted Income does not exceed fifty percent (50%) of Median Income for the Area as determined by the United States Department of Housing and Urban Development from time to time and as set forth in Health and Safety Code Section 50105.

## **ARTICLE II**

### **LAND USE RESTRICTIONS; IMPROVEMENTS**

Section 1. Uses. The Participant shall develop the Approved Housing Project on the Site in conformity with the AHA. Thereafter, the Site shall be operated as an Affordable Housing Project and devoted only to the uses specified in the AHA for the periods of time specified herein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Participant pursuant to the AHA, shall conform to all applicable provisions of the Moreno Valley Municipal Code, the City Approvals, the Rules and Regulations, and the HOME Regulations.

The Site shall be used, maintained and operated in accordance with the AHA and this Regulatory Agreement for the Required Covenant Period. None of the units in the Rental Project shall at any time be utilized on a transient basis nor shall the Rental Project or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer court or park. No part of the Site, from the date the Participant acquired the Site, has been or will at any time be owned or used as a cooperative housing corporation or a community apartment project or a stock cooperative.

Section 2. Affordable Housing.

*Number of Units.* Throughout the Required Covenant Period, not less than four (4) of the Units shall be rented at Affordable Rent to Low Income Households. Required Affordable Units shall be continuously occupied by or held available for occupancy by Very Low Income Households (as to one Unit) and Low Income Households (as to three Units), at an Affordable Rent. All Affordable Units shall be rented at Affordable Rent. For this purpose, a tenant who qualifies as a Very Low Income Household at the time he or she first occupies an Affordable Unit shall be deemed to continue to be so qualified until such time as a recertification of such individual’s or family’s income in accordance with Section 3 below demonstrates that such individual or family no longer qualifies as a Very Low Income Household. Moreover, a unit previously occupied by a Very Low Income Household, and then vacated shall be considered occupied by such Very Low Income Household until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed thirty-one (31) days. The same protocol shall be followed as to Low Income Households.



At such time as a tenant ceases to qualify as a Very Low Income Household, the unit occupied by such tenant shall cease to be a Very Low Income Unit. The Participant shall replace each such Very Low Income Unit by designating the next available unit and any necessary units thereafter as a Very Low Income Unit. For purposes of this Agreement, such designated unit will be considered a Very Low Income Unit if it is held vacant and available for occupancy by a Very Low Income Household, and, upon occupancy, the income eligibility of the tenant as a Very Low Income Household is verified and the unit is rented at Affordable Rent. The same protocol shall be followed as to Low Income Households.

In the event a household's income initially complies with the income restriction for a Very Low Income Household or a Low Income Household but the income of such household increases, such increase shall not be deemed to result in a violation of the restrictions of this Regulatory Agreement concerning limitations upon income of occupants, provided that the occupancy by such household is for a reasonable time of not to exceed one year (measured from the time the income of the household ceases to qualify at such affordability level). To the greatest extent allowable by law, at such time(s) as a household's income ceases to qualify, the rent for the corresponding unit for such tenant shall be modified to equal market rent as established in good faith by the Participant (with the rent to revert to affordable rent for the next conforming occupant). The Participant shall include in its rental agreements provisions which implement these requirements and limitations, and the Participant shall expressly inform prospective renters as to these provisions prior to the commencement of a tenancy.

*Duration of Affordability Requirements.* The Required Affordable Units shall be available to and occupied by Very Low Income Households and Low Income Households at Affordable Rent, as more particularly set forth herein, throughout the Required Covenant Period. All tenants residing in the Affordable Units during the last two (2) years of the Required Covenant Period shall be given notice by the Participant at least once every six (6) months prior to the expiration date of this requirement, that the rent payable on the Affordable Unit may be raised to a market rate rent at the end of the Required Covenant Period.

*Selection of Tenants.* As specified hereinbelow, Participant shall demonstrate to the City that the proposed tenants of each of the Required Affordable Units constitutes a Very Low Income Households or a Low Income Household in conformity with the provisions hereof.

Prior to the rental or lease of an Required Affordable Unit to a tenant, and as set forth in this Section 2 of Article II of this Declaration, the Participant shall require the tenant to execute a written lease and to complete an Income Verification certifying that the tenant(s) occupying the Required Affordable Unit is/are a Very Low Income Household or a Low Income Household and meet(s) the eligibility requirements established for the Required Affordable Unit. The Participant shall verify the income of the tenant(s).

The Participant shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. The Participant shall not apply selection criteria to Section 8 certificate holders which are more burdensome than criteria applied to any other prospective tenants.

*Determination of Affordable Rent for the Affordable Units.* The Affordable Units shall be rented or leased at Affordable Rent. Affordable Rent shall be determined as those rents applied by

TCAC for projects for which Tax Credits are awarded (without regard to the absence of Tax Credits for this Project).

THE PARTICIPANT UNDERSTANDS AND KNOWINGLY AGREES THAT THE MAXIMUM RENTAL FOR THE AFFORDABLE UNITS ESTABLISHED BY THE AHA AND THIS REGULATORY AGREEMENT IS SUBSTANTIALLY BELOW THE FAIR MARKET RENT FOR THE AFFORDABLE UNITS.

Section 3. Participant Verification, Program Compliance, Annual Reports.

*Income Verification and Certification.* The Participant will obtain and maintain on file an Income Verification from each tenant, dated immediately prior to the initial occupancy of such tenant in the Rental Project.

On March 1, 2017 and annually thereafter, the Participant shall file with each of the City or its designee a Certificate, containing all information described at Health and Safety Code Section 33418, in a form prescribed by the City. Each Certificate shall cover the immediately preceding fiscal year.

In addition, commencing as of March 1, 2017, and continuing on each March 1 thereafter until July 1, 2071, the Participant shall submit an Audited Financial Statement for the previous Year (or portion thereof), including all funds from whatever source provided to the Participant or any Related Entity in connection with the Development. The Audited Financial Statement shall demonstrate ongoing compliance with this Regulatory Agreement, including without limitation Section 5.2.2 hereof.

The Participant shall maintain on file each tenant's executed lease and Income Verification and rental records for the Development and the Housing Units. The Participant shall maintain complete and accurate records pertaining to the Low Income Units and will permit any duly authorized representative of the City to inspect the books and records of the Participant pertaining to the Development, including those records pertaining to the occupancy of the Units. The Participant shall prepare and submit to the City annually commencing March 1, 2017 and continuing throughout each Year until and including June 1, 2069, a Certificate of Continuing Program Compliance. Such documentation shall state for each unit in the Development the unit size, the rental amount, the number of occupants, and the income of the occupants and any other information which may be used to determine compliance with the terms of this Regulatory Agreement and the AHA.

As part of its annual report, the Participant shall include a statement of amounts payable by Participant under this Regulatory Agreement supported by an Audited Financial Statement (prepared by an independent accounting firm reasonably acceptable to the City) which sets forth information in detail sufficient for adequate review by the City for the purposes of confirming those amounts payable by the Participant to the City as well as showing the general financial performance of the Development ("Annual Financial Report"). Each Annual Financial Report shall include a profit and loss statement showing Gross Revenues, Operating Expenses, Debt Services, Operating Reserve, Capital Replacement Reserve, Chargeable Fees (and all components thereof), and Residual Receipts, all certified by the Audited Financial Statement. In the event the amounts reported or paid deviate by five percent (5%) or more from that amount owing upon review of the Participant's submittal, Participant shall reimburse City for its cost to review (which may require engagement of auditors) and collect the amounts owing.

*Reporting Amounts.* City intends to utilize as a standard for the collection of information from the Participant that information described at Section 33418 of the California Health and Safety Code in connection with the monitoring of Affordable Units by Participant to and the submitting of annual reports required by Section 3 of Article II of this Declaration. City relies upon such reports in connection with the HOME Regulations. In the event the Participant fails to submit to the City or its designee the Certification as required by this Section 3, the Participant shall be in noncompliance with this Regulatory Agreement. In the event the Participant remains in noncompliance for thirty (30) days following receipt of written notice from the City of such noncompliance, then the Participant shall, without further notice or opportunity to cure, pay to the City Two Hundred Fifty Dollars (\$250.00) per Required Affordable Unit for each year Participant fails to submit a Certificate covering each and every housing unit on the Site. The foregoing portion of this paragraph shall not limit other remedies of the City.

Section 4. Nondiscrimination. The Participant shall refrain from restricting the rental, sale or lease of the Site, or any portion thereof, on the basis of race, color, creed, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

(2) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased. The foregoing covenants shall run with the land.”

(3) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises subject to this

agreement nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises. The foregoing covenants shall run with the land.”

The covenants established in this Declaration and the deeds of conveyance for the Site shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City and any successor in interest to the Site, together with any property acquired by the Participant pursuant to this Agreement, or any part thereof. The covenants against discrimination as set forth in this Section 4 of Article II shall remain in effect in perpetuity.

Section 5. Keeping of Animals. No animals of any kind shall be raised, bred or kept on the Site, except that domesticated dogs, cats or other household pets may be kept by the tenants in the Rental Project at the discretion of Participant and subject to compliance with all laws. However, no animal shall be kept, bred or maintained for any commercial purpose or for fighting purposes. Nothing permitted herein shall derogate in any way the right of the Participant to further restrict keeping of pets.

Section 6. Parking of Vehicles. The Participant shall not permit the parking, storing or keeping of any vehicle except wholly within the parking areas designated for the Required Affordable Units. The Participant shall not permit the parking, storing or keeping of any large commercial type vehicle (dump truck, cement mixer truck, oil or gas truck, etc.), or any recreational vehicle over twenty (20) feet in length (camper unit, motor home, trailer, mobile home or other similar vehicle), boats over twenty (20) feet in length, or any vehicle other than a private passenger vehicle, upon any portion of the Common Areas, including parking spaces. For purposes of this section, a pickup truck with a pickup bed mounted camper shall be considered a private passenger vehicle; provided however, that no such vehicle shall be used for residential purposes while parked on the premises.

The Participant shall not permit major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle to be conducted upon any portion of the Common Area, including the parking areas, except for emergency repairs thereto and then only to the extent necessary to enable movement of the vehicle to a proper repair facility. No inoperable vehicle shall be stored or kept in the Common Area. The Participant shall give the vehicle owner not less than four (4) days, nor more than seven (7) days’ notice and an opportunity to remove any vehicle parked, stored or kept in violation of the provisions of this Declaration. Notice shall consist minimally of a reasonably diligent attempt to personally notify the vehicle owner or alternatively leaving written notice on the subject vehicle. After due notice and opportunity have been given to the vehicle owner, the Participant shall have the right to remove, at the vehicle owner’s expense, any vehicle parked, stored or kept in violation of the provisions of this Declaration.

Section 7. Maximum Occupancies. No persons shall be permitted to occupy any Unit within the Rental Project in excess of applicable limit of maximum occupancy set by the Moreno Valley Municipal Code and the laws of the State of California.

Section 8. Signs Required. “No loitering” signs will be posted at each building and enforced by the owner(s). “Illegally parked vehicles will be towed” signs in compliance with California Vehicle Code requirements will be posted and enforced by the Participant.

Section 9. Fences and Electronic Installations. The Participant shall not install or knowingly permit to be installed on the exterior of any improvement or building on any fences or any antenna or other television or radio receiving device, excepting satellite dishes having a diameter of eighteen inches (18”) or less, without prior written consent of City. This prohibition shall not prohibit the installation of cable television or subscription wires or receiving devices.

Section 10. Structural Change. Nothing shall be done on the Site in, on or to any building which would structurally change the exterior or the interior bearing walls of any such building or structure, except as otherwise provided herein. Nothing herein shall affect the rights of the Participant to repair, alter or construct improvements on the buildings on the Site unless such repair, alteration or improvement would impair the structural integrity and/or exterior appearance of said buildings. Nothing herein shall be deemed to prohibit work ordered to be performed by the City building official.

Section 11. Compliance with Laws. The Participant shall comply with all applicable laws in connection with the development and use of the Site, including without limitation the California Community Redevelopment Law (Health and Safety Code section 33000, *et seq.*) and Fair Housing Act (42 U.S.C. § 3601, *et seq.*, and 24 C.F.R. § 100.300, *et seq.*) and the Rules and Regulations. The Participant is a sophisticated party, with substantial experience in the acquisition, development, financing, obtaining financing for, marketing, and operation of affordable housing projects, and with the negotiation, review, and preparation of agreements and other documents in connection with such activities. The Participant is familiar with and has reviewed all laws and regulations pertaining to the acquisition, development and operation of the Rental Project and has obtained advice from any advisers of its own choosing in connection with this Agreement.

### ARTICLE III

#### DUTIES OF PARTICIPANT: SPECIFIC MAINTENANCE RESPONSIBILITIES

Section 1. Exterior Building Maintenance. All exterior, painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. Any such defacing marks shall be cleaned or removed within a reasonable period of time as set forth herein.

Section 2. Front and Side Exteriors. The Participant shall at all times maintain the front exterior and yard in a clean, safe and presentable manner, free from defacing marks or any disrepair and any visible side exteriors. The Participant shall hire maintenance personnel to maintain and/or repair any front exterior or yard or visible side yard and exterior of any lot or building.

Section 3. Graffiti Removal. All graffiti, and defacement of any type, including marks, words and pictures must be removed and any necessary painting or repair completed by the later to occur of (i) seventy-two (72) hours of their creation or (ii) seventy-two (72) hours after notice to Participant.

Section 4. Driveways. All driveways must be paved and maintained with impervious material in accordance with the Moreno Valley Municipal Code. In addition, all water must be made to drain freely to the public part of the waterway without any pooling.

Section 5. Exterior Illumination. The Participant shall at all times maintain adequate lighting in all entrance ways, garages and parking areas. Adequate lighting means outdoor, night



lighting designed and installed, which provides no less than one (1.0) foot candles in the parking areas and no less than one and one-half (1-1/2) foot candles in the walking areas or common areas and no less than 0.2 foot candles at the point of least illumination.

Section 6. Front Setbacks. All front setback areas that are not buildings, driveways or walkways shall be adequately and appropriately landscaped in accordance with minimum standards established by the City and shall be maintained by the Participant. The landscaping shall meet minimum standards set from time to time by the City.

Section 7. Trash Bins. All trash shall be collected and placed at all times in an enclosable bin to be placed in a designated refuse/trash bin area. The designated area shall be located so that the bin will, to the extent possible, be readily accessible from the street.

Section 8. Prohibited Signs. No exterior sign of any kind shall be displayed to the public view on or from any portion of the Site without the approval of the City and appropriate City departments if any as required by the City Code.

Section 9. Duty to Prevent Hazardous Material Contamination. During the renovation and operation of the Development, Participant shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Development. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. Participant shall notify the City, and provide to the City a copy or copies, of any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Participant shall report to the City, as soon as possible after each incident, any unusual, potentially important incidents in the event of a release of any Hazardous Materials into the environment.

For purposes of this Section, “Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City, or any other political subdivision in which the Development is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Participant or the Development.

For purposes of this Section, “Hazardous Materials” or “Hazardous Materials” means and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls, (ix)

designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903); (xi) Methyl tert Butyl Ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, et seq., specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities below attainment levels identified in one or more of the enactments identified above as Governmental Requirements, including those product and amounts as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Development, including without limitation alcohol, aspirin, tobacco and saccharine.

Section 10. Compliance With Laws. Participant shall carry out the design, development and operation of the Development in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Moreno Valley Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

Section 11. Exterior Building Maintenance. All exterior, painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. Any such defacing marks shall be cleaned or removed within a reasonable period of time as set forth herein.

**ARTICLE IV**  
**OBLIGATION TO MAINTAIN, REPAIR AND REBUILD; OBLIGATION TO MAINTAIN RESERVES**

Section 1. Maintenance by Participant. The Participant shall, at its sole cost and expense, maintain and repair the Site and the improvements thereon keeping the same in a decent, safe and sanitary manner, in accordance with all applicable Municipal Code Provisions, the United States Department of Housing and Urban Development (“HUD”) Housing Quality Standards (“HQS”), and in good condition and making all repairs as they may be required by this Regulatory Agreement and by all applicable Municipal Code and Uniform Code provisions. The Participant shall also maintain the landscaping required to be planted in a healthy condition. If, at any time, Participant fails to maintain the Rental Project or any portion thereof in conformance with this Section or Article III, and said condition is not corrected after the expiration of forty-five (45) days from the date of written notice from the City, the City may perform the necessary maintenance and

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Participant shall pay such costs as are reasonably incurred for such maintenance. Payment shall be due within fifteen (15) days of receipt of an invoice from the City.

Section 2. Damage and Destruction Affecting Project - Participant's Duty to Rebuild. If all or any portion of the Site and the improvements thereon is damaged or destroyed by fire or other casualty, it shall be the duty of the Participant to rebuild, repair or reconstruct said portion of the Site and/or the improvements in a timely manner which will restore it to Code compliance condition.

In furtherance of the requirements of this Section 2, Participant shall keep the construction on the Site insured by carriers at all times satisfactory to City against loss by fire and such other hazards, casualties, liabilities and contingencies as included within an all risk extended coverage hazard insurance policy, in an amount of the full replacement cost of the constructions. In the event of loss, Participant shall give prompt notice to the insurance carrier and to the City.

If the Site is abandoned by the Participant, or if Participant fails to respond to City within thirty (30) days from the date notice is mailed by City to Participant that the insurance carrier offers to settle a claim for insurance benefits, City is authorized to collect and apply the insurance proceeds at City's option either to restoration or repair of the Site.

Section 3. Variance in Exterior Appearance and Design. In the event the Rental Project sustains substantial physical damage due to a casualty event, the Participant may apply to the City of Moreno Valley for approval to reconstruct, rebuild or repair in a manner which will provide different exterior appearance and lot design from that which existed prior to the date of the casualty.

Section 4. Time Limitation. Upon damage to the Site or the Rental Project or other improvements, the Participant shall be obligated to proceed with all due diligence hereunder and commence reconstruction within two (2) months after the damage occurs and complete reconstruction within six (6) months after damage occurs or demolition and vacate within two (2) months, unless prevented by causes beyond their reasonable control, in which event reconstruction shall be commenced at the earliest feasible time.

Section 5. Maintenance of Reserves. Participant shall set aside, or cause the permanent lender to, commencing as of the first month following the first anniversary of the completion of the first Housing Unit (as such completion is evidenced by the issuance of a certificate of occupancy by the City as to the corresponding building) set aside the Capital Replacement Reserve. A Capital Replacement Reserve shall be established by the Participant as a capital reserve in the amount of One Thousand Dollars (\$1,000.00) per Year (for the first Year), which shall remain fixed for the first five Years and then shall increase by fifty dollars (\$50.00) per unit annually, to a maximum of Five Hundred Dollars (\$500.00) per unit annually. The Capital Replacement Reserve is more fully described in Section 3.3 of this Agreement. The Capital Replacement Reserve shall be deposited into a separate interest-bearing trust account. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Improvements' fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Development become necessary, the Capital Replacement Reserve shall be the first source of payment therefor; provided, however, that Participant may first use other funds for payment with the prior consent of City Manager, which approval shall not be unreasonably withheld. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Participant of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site in the manner prescribed in this Section 5 and the AHA. Participant, at its expense,



shall submit to City on not less than an annual basis an accounting for the Capital Replacement Reserve. Any moneys in the Capital Replacement Reserve which are not expended as of June 1, 2067 shall be applied toward the obligations of Participant to City under the AHA, including the attachments thereto.

Capital repairs to and replacement of the Improvements shall include only those items with a long useful life, including without limitation the following:

- (a) Appliance replacement;
- (b) Hot water heater replacement;
- (c) Plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets;
- (d) Air conditioning and heating replacement;
- (e) Asphalt replacement;
- (f) Roofing replacement;
- (g) Landscape tree replacement and irrigation pipe and controls replacement;
- (h) Gas line pipe replacement;
- (i) Lighting fixture replacement; and
- (j) Miscellaneous motors and blowers.

## **ARTICLE V** **ENFORCEMENT**

**Section 1.** **Remedies.** Breach of the covenants contained in the Declaration may be enjoined, abated or remedied by appropriate legal proceeding by the City.

This Declaration does not in any way infringe on the right or duties of the City of Moreno Valley to enforce any of the provisions of the Moreno Valley Municipal Code including, but not limited to, the abatement of dangerous buildings.

**Section 2.** **Nuisance.** The result of every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowable at law or equity, against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any owner or its successors in interest, without derogation of the City's rights under law.

**Section 3.** **Right of Entry.** In addition to the above general rights of enforcement, the City shall have the right through its agents and employees, to enter upon any part of the project area for the purpose of enforcing the California Vehicle Code, and the ordinances and other regulations of the City, and for maintenance and/or repair of any or all publicly owned utilities. In addition, the City has the right of entry at reasonable hours and upon and after reasonable attempts to contact

Participant, on any lot to effect emergency repairs or maintenance which the Participant has failed to perform. Subsequent to sixty (60) days written notice to the Participant specifically outlining the Participant's noncompliance, the City shall have the right of entry on the Site at reasonable hours to enforce compliance with this Declaration which the Participant has failed to perform.

Section 4. Costs of Repair. The costs borne by the City of any such repairs or maintenance emergency and/or non-emergency, shall become a charge for which Participant shall be responsible.

Section 5. Cumulative Remedies. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

Section 6. Failure to Enforce. The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

Section 7. Enforcement and Nonliability. The City may from time to time make such efforts, if any, as it shall deem appropriate enforce and/or assist in enforcing this Declaration. However, the City will not be subject to any liability for failure to affirmatively enforce any provision of this Declaration.

## **ARTICLE VI** **GENERAL PROVISIONS**

Section 1. Covenant Against Partition. By acceptance of its interest in the Site, the Participant shall be deemed to covenant for itself and for its heirs, representatives, successors and assigns, that it will not institute legal proceedings or otherwise seek to effect partition of its right and interest in the interest being conveyed to the Participant, or the burdens running with the land as a result of this Regulatory Agreement.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in all force and effect.

Section 3. Term. This Declaration shall run with and bind the interest of the Participant in the Site, and shall inure to the owner(s) of any property subject to this Declaration, his legal representatives, heirs, successors and assigns, and as provided in Article VI, Sections 2 and 3, be enforceable by the City, for a term equal to the Required Covenant Period as defined in the AHA, provided; however, that the covenants regarding nondiscrimination set forth in Section 4 of Article II of this Declaration shall remain in effect for perpetuity.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of rental housing available at Affordable Rent for Low Income Households and in light of the circumstance that approximately one hundred percent (100%) of the equity and one hundred percent (100%) of the total funding to acquire the Site and provide for the initial improvement to the Units thereon has been provided by the City. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

The Participant shall be obligated by this Declaration to comply with the provisions hereof, as well as the AHA (including with limitation the attachments thereto). In the event of conflict, the Participant shall comply with the most stringent requirements, in each case.

Section 5. Amendments. This Declaration may be amended only by the written agreement of the Participant and the City.

Section 6. Encroachments. None of the rights and obligations of the Participant created herein shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of Participant if said encroachment occurs due to the willful conduct of said Participant.

Section 7. Notices. Any notice permitted or required to be delivered as provided herein to Participant shall be in writing and may be delivered either personally or by certified mail. Notice to the City shall be made by certified mail to the City Manager or his designee at 14177 Frederick Street, Moreno Valley, California 92552-0805 (with a copy to Stradling Yocca Carlson & Rauth, Attention: Mark J. Huebsch, 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660), and shall be effective upon receipt. Notice to Participant shall be made by certified mail to Riverside Housing Development Corporation, a California nonprofit public benefit corporation, 3985 University Avenue, Riverside, California 92501, and shall be effective upon receipt. Such address may be changed from time to time by notice in writing.

**CITY OF MORENO VALLEY,**  
a municipal corporation

By: \_\_\_\_\_  
City Manager

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 38 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-010

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

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\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

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- Individual
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Title(s)

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Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 10**  
**INCOME VERIFICATION**

Part I -- General Information

- 1. Project Location: \_\_\_\_\_
- 2. Landlord's Name: \_\_\_\_\_

Part II -- Unit Information

- |                |                       |                 |                        |
|----------------|-----------------------|-----------------|------------------------|
| 3. Unit Number | 4. Number of Bedrooms | 5. Monthly Rent | 6. Number of Occupants |
|----------------|-----------------------|-----------------|------------------------|

Part III -- Affidavit of Tenant

I, \_\_\_\_\_, and I, \_\_\_\_\_, as applicants for rental of an apartment Unit at the above-described location, do hereby represent and warrant as follows:

A. (My/Our) gross income (anticipated total annual income) **does not exceed fifty percent (50%)** of the median income for the Riverside-San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$\_\_\_\_\_. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

\_\_\_\_\_  
Tenant(s)' Initials

B. (My/Our) gross income (anticipated total annual income) exceeds fifty percent (50%) but **does not exceed eighty percent (80%)** of the median income for the Riverside-San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$\_\_\_\_\_. The following computation includes all income (I/we) anticipate receiving for the 12 month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

\_\_\_\_\_  
Tenant(s)' Initials

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



C. (My/Our) gross income (anticipated total annual income) exceeds eighty percent (80%) but **does not exceed one hundred twenty percent (120%)** of the median income for the Riverside-San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$\_\_\_\_\_. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

\_\_\_\_\_  
 Tenant(s)' Initials

D. (My/Our) gross income (anticipated total annual income) **exceeds one hundred twenty (120%)** of the median income for the Riverside-San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$\_\_\_\_\_. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

\_\_\_\_\_  
 Tenant(s)' Initials

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

1. Tenants qualifying as A and B, above, must complete the following:

<b>Monthly Gross Income</b> <b>(All Sources of Income of All Adult Household Members Must be Listed)</b>			
Source	Head of Household	Co-Tenants	Total
Gross amount, before payroll deductions of wages, salaries, overtime pay, commissions, fees, tips and bonuses			
Interest and/or dividends			
Net income from business or from rental property			
Social security, annuities, insurance policies, pension/retirement funds, disability or death benefits received periodically			
Payment in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay			
Alimony, child support, other periodic allowances			
Public assistance, welfare payments			
Regular pay, special pay and allowances of members of Armed Forces			
Other			
			Total: _____

Total x 12 \_\_\_\_\_ = Gross Annual Household Income

Note: The following items are **not** considered income: casual or sporadic gifts; amounts specifically for or in reimbursement of medical expenses; lump sum payments such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses; educational scholarships paid directly to

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

the student or educational institution; government benefits to a veteran for education; special pay to a serviceman head of family away from home and under hostile fire; foster child care payments; value of coupon allotments for purpose of food under Food Stamp Act of 1964 which is in excess of amount actually charged the eligible household; relocation payments under Title II of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; payments received pursuant to participation in the following programs: VISTA, Service Learning Programs, and Special Volunteer Programs, SCORE, ACE, Retired Senior Volunteer Program, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience.

- 2. This affidavit is made with the knowledge that it will be relied upon by the Landlord to determine maximum income for eligibility and (I/we) warrant that all information set forth in this document is true, correct and complete and based upon information (I/we) deem reliable and that the estimate contained in paragraph 1 of this Part III is reasonable and based upon such investigation as the undersigned deemed necessary.
- 3. (I/We) will assist the Landlord in obtaining any information or documents required to verify the statements made in this Part III and have attached hereto copies of federal income tax return for most recent tax year in which a return was filed (past two years federal income tax returns for self-employed persons).
- 4. (I/We) acknowledge that (I/we) have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of (my/our) agreement with the Landlord to rent the unit and will additionally enable the Landlord, the City of Moreno Valley to initiate and pursue all applicable legal and equitable remedies with respect to the unit and to me/us.

(I/We) do hereby swear under penalty of perjury that the foregoing statements are true and correct.

\_\_\_\_\_
Date

\_\_\_\_\_
Tenant

\_\_\_\_\_
Date

\_\_\_\_\_
Tenant

**INCOME VERIFICATION**  
**(for employed persons)**

The undersigned employee has applied for a rental unit located in a project financed under a multifamily housing program of the City of Moreno Valley for persons of Low Income. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages \_\_\_\_\_  
Overtime \_\_\_\_\_  
Bonuses \_\_\_\_\_  
Commissions \_\_\_\_\_  
Total current income \_\_\_\_\_

I hereby certify that the statements above are true and complete to the best of my knowledge.

\_\_\_\_\_  
Signature Date Title

I hereby grant you permission to disclose my income to \_\_\_\_\_ in order that they may determine my income eligibility for rental of an apartment Unit located in their project which has been financed under a multifamily housing program of the City of Moreno Valley.

\_\_\_\_\_  
Signature Date

Please send to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**INCOME VERIFICATION**  
**(for self-employed persons)**

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 11**

**EQUITY SHARE NOTE**

**PROMISSORY NOTE**

**(PROMISSORY NOTE SECURED BY DEED OF TRUST)**

**NOTICE TO MAKER: EQUITY SHARE AMOUNT(S) SHALL BE DUE AND PAYABLE IF CERTAIN EVENTS OCCUR**

\$209,190.00 (“Original Principal Amount”) plus equity share amount(s) Moreno Valley, California  
\_\_\_\_\_, 2015 (“Loan Date”)

Site Address: 22899 Allies Place

Moreno Valley, California 92551  
City State Zip Code

FOR VALUE RECEIVED, the undersigned RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California Limited Partnership, a California non-profit public benefit corporation (“Maker” or “Participant”), having its principal place of business at 3985 University Avenue, California 92501, promises to pay to the order of CITY OF MORENO VALLEY, a municipal corporation (“Payee”), at 14177 Frederick Street, Moreno Valley, California 92552-0805, or at such other place as the holder of this promissory note (the “Note”) from time to time may designate in writing, the principal sum of Two Hundred Nine Thousand One Hundred Ninety Dollars (\$209,190.00), together with such equity share amount(s) as become payable from time to time. This Note is being delivered pursuant to the Affordable Housing Agreement dated as of September 22, 2015, by and between Maker and Payee (the “AHA” or the “Agreement”). The loan evidenced by this Note shall be governed by such provisions of the AHA (including without limitation the attachments thereto) as shall be applicable. All capitalized terms used herein shall have the meanings set forth therefor in the AHA. No interest shall accrue on the amounts so disbursed provided that the loan evidenced by this Note includes provision for equity sharing.

1. **Term.** The term of this Note (the “Term”) commences as of the Loan Date and shall continue to and mature on July 1, 2071 (the “Maturity Date”).

2. **Payments.** Payments shall be due and payable hereunder in the event of the transfer of the “Site” (as defined in the AHA and described in the Equity Share Deed of Trust) or the occurrence of any default under the AHA, the Senior Note, the Capital Recovery Note, the Resale Restriction Agreement, or the CC&Rs.

3. **Note Amount.** The sums due and payable pursuant to the terms and provisions of this Note consist of both the Original Principal Amount and amounts which become payable as “Equity Share Amounts” (as set forth in Section 7 hereof), as both terms are hereinafter defined (collectively, the “Note Amount”);

(i) **Loan Amount.** As one component of the Note Amount, Maker shall pay to City the principal amount of Two Hundred Nine Thousand One Hundred Ninety Dollars (\$209,190.00); and

(ii) **Equity Share Amount(s).** As a second component of the Note Amount, Maker shall pay to City an Equity Share Amount as set forth in Section 7 herein. It is contemplated that this Note will remain in effect throughout the Required Covenant Period, and that equity share payments will be made to the Payee in connection with each “Transfer” (as defined below) that occurs during the Required Covenant Period (whether or not the Payee accelerates payment hereunder). It is further contemplated that the deed of trust securing payment of this Note will not be reconveyed in that it secures performance under the AHA and the CC&Rs.

4. **Loan Amount; No Interest, Equity Share.** The Loan Amount shall accrue no (0%) interest; provided that upon occurrence of each and every event of acceleration occurs as set forth in Section 6, an Equity Share Amount shall become due and payable.

5. **Loan Amount; Time of Payment and Forgiveness.** No repayment of the Loan Amount shall be required unless and until the Note Amount becomes due and payable, as provided in Section 6 below.

6. **Acceleration.** In addition to Section 2 hereof, in the event of any Transfer (as defined below) of the Site, or any portion thereof or interest therein, Payee shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable (including the whole of the Note Amount and the Equity Share Amount). As used herein, the term “Transfer” means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Site, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Site, granting of an option to purchase any portion of or interest in the Site or any interest therein, or the lease of all or substantially all of the Site or of all or substantially all of the improvements located thereon. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer. “Transfer” shall not include: (i) the leasing of individual dwelling units on the Site so long as Trustor fully complies with the provisions of the CC&Rs and the AHA relating to such leasing activity; (ii) the sale or other transfer of the Site to a transferee which is accomplished in strict compliance with the Agreement and with City’s prior written approval, or (iii) the refinancing of the Senior Loan amount not in excess of the sum of the then current loan balance secured by the Senior Loan and loan closing costs, provided that there is no change to the rights and remedies of the City under the Agreement (including without limitation the attachments thereto) in connection with such refinancing.

7. **Equity Share Amount(s).** In the event that the Note Amount becomes due and payable pursuant to Section 6 above, the Maker shall pay to Holder the “Equity Share Amount(s),” as hereinafter defined. The Note Amount, including without limitation an Equity Share Amount, shall

be computed and shall be due and payable in connection with each and every Event of Acceleration (as described in Section 6 hereof) which occurs during the Affordability Period.

(a) **Calculation of Equity Share Amount(s).** The “Equity Share Amount(s)” means an amount equal to a percentage share of the appreciation of the Site determined by multiplying a variable percentage factor (“Variable Applicable Factor”) by the difference between the Sales Price and the Purchase Price.

(b) **Variable Applicable Factor Calculation.** The Variable Applicable Factor shall be calculated by dividing the “Net City Investment” (as defined below) by the sum of the City Investment plus the Maker’s total initial equity investment as described below (“Participant Investment”). The “Net City Investment” is derived by taking the Holder’s total initial equity investment of \$629,865 (“City Investment”) then subtracting the original principal amount under the Capital Recovery Note (namely, \$243,675.00) and the Senior Note (\$177,000.00), with the resulting amount (namely, \$209,190.00) constituting the “Net City Investment”. In computing the Variable Applicable Factor, the Net City Investment shall be the numerator, and the sum of the Net City Investment plus the Participant Investment shall be the denominator of a fraction that equals a percentage that is the Variable Applicable Factor (subject to Section 7(b)(i)).

$$\text{Variable Applicable Factor} = \frac{\text{Net City Investment}}{\text{Net City Investment} + \text{Participant Investment}}$$

For example, if the Net City Investment equals \$209,190.00, for purpose of illustration, and the Participant Investment equals \$0, the Variable Applicable Factor would equal 100% (\$209,190.00 divided by the sum of \$209,190.00 plus \$0).

$$100\% \text{ (Variable Applicable Factor)} = \frac{\$209,190.00 \text{ (Net City Investment)}}{\$209,190.00 \text{ (Net City Investment)} + \$0 \text{ (Participant Investment)}} = (\$209,190.00)$$

The amount of the Net City Investment shall be deemed to be Two Hundred Nine Thousand One Hundred Ninety Dollars (\$209,190.00) (the “Net City Investment Amount”), based upon the total amount of moneys committed by the City under the AHA less the original principal amount of each of the Senior Note and the Capital Recovery Note.

The “Participant Investment” is the sum of the following amounts contributed by Trustor to the Site: (i) Trustor’s cash down payment (consisting only of equity and not including any amounts loaned; namely, zero) and (ii) Trustor’s portion of closing costs (to the extent paid in cash by Trustor). In the above illustration, it is assumed that the Participant makes no cash down payment and makes no payment for closing costs.

The “Purchase Price” is the original purchase price paid by Maker (or Maker as the qualified successor owner of the Site) to the seller of the Site (“Seller”) for Seller’s interest in the Site, exclusive of escrow fees, title insurance costs, broker’s commissions, loan fees or any other closing or transaction costs; in the case of the initial purchase of the Site by the Maker, the sum of \$263,000 (the “Original Price”) is the purchase price. Subject to the provisions set forth herein



below, the value of Qualified Capital Improvements shall be added to the Purchase Price when calculating the Equity Share Amount(s).

The “Sales Price” is the price to be paid by the prospective buyer of the Site (“Buyer”) to Maker (or Maker as the qualified successor owner of the Site) for Maker’s interest in the Site, exclusive of reasonable escrow fees, title insurance costs, broker’s commissions, loan fees or any other closing or transaction costs. The Sales Price shall be established in conformity with Section 7(h)(i). In the event of Maker’s refinancing, failure to occupy, or default under the Agreement, the “Sales Price” shall be established in conformity with Section 7(h)(ii).

(c) **Using the Variable Applicable Factor to Determine the Equity Share Amount(s).** The Equity Share Amount(s) is calculated by multiplying the Variable Applicable Factor by the difference between the Sales Price and the Purchase Price. For example, if the Variable Applicable Factor equals 100%, the Equity Share Amount(s) would then be computed based upon a Factor of 100% (Variable Applicable Factor) x (Sales Price minus the Purchase Price).

In the above example, if the Purchase Price equals \$263,000 and the Sales Price (for a sale occurring prior to the tenth (10th) anniversary of the acquisition of the Site by the original owner and assuming no Qualified Capital Improvements) equals \$300,000, the Equity Share Amount(s) would equal \$37,000 (100% x (\$300,000 minus \$263,000)).

$$100\% \text{ (Variable Applicable Factor)} \times \$37,000 \text{ (Sales Price – Purchase Price)} = \$37,000 \text{ (Equity Share Amount(s))}.$$

Using the same example but assuming that the sale takes place after the tenth and prior to the eleventh anniversary of the acquisition of the Site by the Participant, the Equity Share Amount would equal \$33,300 (90.00% Variable Rate Factor [100.00 – 10 = 90] x \$37,000 [Sales Price – Purchase Price] = \$33,300 [Equity Share Amount]). Note: the setting forth of the examples herein does not indicate that such sales are permitted; the restrictions as to affordable rents and Low Income as set forth in the Agreement, the Resale Restriction Agreement and the CC&Rs will apply.

(d) **Calculation of Equity Share Amount(s) for Subsequent Buyers (Participants).** If pursuant to Section 9 hereof, a Buyer has fully assumed the Maker’s obligations under the Agreement, this Note, the Participant completes the Improvements and operates the Site in strict conformity with each of the AHA, the CC&Rs, the Resale Restriction Agreement, this Note and the Equity Share Deed of Trust, and such Buyer causes an event of acceleration to occur, the Equity Share Amount(s) to be paid by such Buyer shall be calculated by multiplying the Variable Applicable Factor, established in Section 7(b) above (and subject to Section 7(e) below), by the difference between the Sales Price, established in conformity with Section 7(h) hereof, and the Purchase Price.

(e) **Credits for Trustor.** Notwithstanding the foregoing portion of this Section 7, in calculating the Variable Applicable Factor, in the event, the Participant completes the Improvements and operates the Site in strict conformity with each of the AHA, the CC&Rs, the Resale Restriction Agreement, this Note and the Equity Share Deed of Trust for a period of not less than ten (10) years, the Variable Applicable Factor shall be reduced by one (1) percentage point per year (or a total of ten [10] points). Thereafter, for each additional year that the Participant (or an

assignee or transferee approved by the City) operates the Site in strict conformity with the CC&Rs, the Variable Applicable Factor shall be reduced by one percentage point (1.0%).

The process for adjustments is more specifically as follows: for the period commencing with the Date of Agreement and until the tenth anniversary of the Date of Agreement (the "Tenth Anniversary"), the Variable Applicable Factor shall be One Hundred Percent (100%), excepting only for such adjustments, if any, as shall have been approved by the City in connection with Qualified Capital Improvements, if any, made and approved under subsection (f) hereof. Within sixty (60) days after the Tenth Anniversary, the City Manager (on behalf of the City) will determine whether the Participant has operated and is operating the Site in conformance with the Agreement (including all attachments thereto). In the event the City Manager determines there has been conforming operation throughout the ten-year period and that there continues to be conforming operation, the Participant will be credited with a ten percent (10%) equity share, to be effective as of the Tenth Anniversary; upon application of such ten percent (10%) equity share, the Variable Applicable Factor shall become ninety percent (90%)[ $100\% - 10\% = 90\%$ ].

Thereafter, as of the first anniversary of the Tenth Anniversary, the City Manager shall determine if there has been conforming operation within the preceding year. If such conforming operation is determined to have occurred, a credit of one percent (1.0%) shall be applied as an equity share adjustment. For example, assuming conforming operation is determined for the first eleven (11) years from the Date of Agreement, the Participant shall have achieved an equity share adjustment of eleven percent (11.0%), with the result that the Variable Applicable Factor would be Eighty-Nine (89.0%).

The process described in the preceding paragraph would be repeated annually, with the result that as of the fifty-fifth (55th) anniversary of the Date of Agreement, assuming conforming operation throughout, the Participant would be eligible to obtain a maximum adjustment of equity share of fifty percent (50%).

The determination that a credit is to be applied shall not result in the payment of cash at that time to the Participant (or any successor); any distribution of funds shall occur only concurrent with payment to the City in connection with an event that causes payment to become due.

The payment to Participant (or any successor) of any amounts attributable to adjustments to the equity share (or Variable Applicable Factor) shall be subject and subordinate to the full satisfaction of the principal amounts of each of the Equity Share Note (this promissory note).

In the event of a change of ownership of the Site, the Variable Applicable Factor shall be recalculated by the City Manager of the City consistent with the methodology used in establishing the original Variable Applicable Factor as of the Date of Agreement, and the process for the availability of credits in respect to conforming operation of the Site shall be repeated in the manner described in the foregoing portion of this subsection (e); provided that the only credits or adjustments available after such a transfer shall be one percent (1.0%) per year for each year of conforming operation occurring after such transfer.

(f) **Qualified Capital Improvements.** The value of any Qualified Capital Improvements which are determined by the City to be required and are completed by Maker during Maker's ownership of the Site and are not paid for by the City shall be added to the Purchase Price when calculating the Equity Share Amount(s) only if, within thirty (30) days following completion of

such improvements (but in no event later than the event of acceleration causing the Equity Share Amount(s) to become immediately due and payable pursuant to Section 6 hereof), Maker submits the following to Holder: (i) an itemized list of the Qualified Capital Improvements, (ii) reliable proof of completion of the Qualified Capital Improvements (as evidenced e.g., by final building permits, certificate of completion or original paid invoices or construction contracts), and (iii) an appraisal from a certified appraiser, in form and substance reasonably acceptable to the City Manager (the “City Manager”), the conclusion of which is that the Qualified Capital Improvements have added the stated amount to the fair market value of the Site.

If, within (30) days of receipt of the information concerning the Qualified Capital Improvements, Holder questions the claimed increase in the value of the Site by reason of said Qualified Capital Improvements, Holder and Maker may, by mutual agreement, establish the value of the Qualified Capital Improvements or Holder may require an appraisal of the Site, at Makers expense, by a second independent certified appraiser appointed by the Holder to determine the fair market value of the Qualified Capital Improvements.

(g) **Determination of Sales Price; Appraisal.**

(i) **Upon Sale of the Site.** In the event of a proposed sale of the Site by Maker and not less than thirty (30) days after Holder receives actual notice of the opening of escrow in connection therewith, the Holder may elect to appoint a certified, independent appraiser to conduct an appraisal of the Site, at Maker’s expense, to assist Holder in determining if the Sales Price is at or near the fair market value of the Site at such time. If the Sales Price is determined by the appraisal to be three percent (3%) or more below the fair market value of the Site as estimated in said appraisal, then the “Sales Price” for purposes of determining the Equity Share Amount(s) shall be the fair market value of the Site established in said appraisal.

(ii) **Upon Refinancing/Failure to Occupy/Default.** In the event of refinancing, sale, other transfer, or default or breach of any provision of the Agreement (including all attachments thereto) which causes the Equity Share Amount(s) to become immediately due and payable, the “Sales Price” for purposes of determining the Equity Share Amount(s) shall be determined by an appraisal of the Site. Holder shall appoint a certified independent appraiser to conduct an appraisal of the Site, at Maker’s expense. Maker agrees that in such event the Equity Share Amount(s) shall be the Variable Applicable Factor multiplied by the difference between the Purchase Price and “Sales Price” as established by the appraised value of the Site at the time of such refinancing, sale, other transfer, or default of the Agreement (including all attachments thereto).

8. **Maker’s Acknowledgment of Equity Share Amount(s).**

**MAKER ACKNOWLEDGES AND AGREES THAT UPON SALE, TRANSFER OR REFINANCING OF THE SITE OR OTHER EVENT OF ACCELERATION, MAKER SHALL PAY TO HOLDER, IN ADDITION TO THE ORIGINAL PRINCIPAL AMOUNT, AN EQUITY SHARE AMOUNT(S) EQUAL TO A PERCENTAGE SHARE OF THE APPRECIATION OF THE PROPERTY AS CALCULATED PURSUANT TO THIS SECTION 7.**

**MAKER’S INITIALS:** \_\_\_\_\_

9. **Security for Note.** This Note shall be secured by a subordinate deed of trust and rider thereto of even date herewith encumbering the Site (“the Equity Share Deed of Trust”), executed by Maker, as trustor, in favor of Holder, as beneficiary.

10. **No Prepayment of Note.** This Note may not be prepaid.

11. **Holder May Assign.** Holder may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Maker.

12. **Maker Assignment Prohibited.** In no event shall Maker assign or transfer any portion of this Note, the Note Amount and/or the Agreement without the prior express written consent of the Holder, as provided in Section 9 hereof.

13. **Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

14. **Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Note shall be in writing and shall be either personally served, sent by telecopy, mailed in the United States mails, certified, return receipt requested, postage prepaid, or sent by other commercially acceptable means, addressed to the party to be served with the copies indicated below, at the last address given by that party to the other under the provisions of this section. All communications shall be deemed delivered at the earlier of actual receipt, the next business day after deposit with Federal Express or other overnight delivery service or two (2) business days following mailing as aforesaid, or if telecopied, when sent, provided a copy is mailed or delivered as provided herein:

**To Maker:**

Riverside Housing Development Corporation  
Attn: Bruce Kulpa  
3985 University Avenue  
Riverside, CA 92501

**To City:**

City of Moreno Valley  
 14177 Frederick Street  
 Moreno Valley, California 92552-0805  
 Attention: Economic Development Director

15. Miscellaneous.

(a) Governing Law. All questions with respect to the construction of this Note and the rights and liabilities of the parties to this Note shall be governed by the laws of the State of California.

(b) Binding on Successors. This Note shall inure to the benefit of, and shall be binding upon, the successors and assigns of each of the parties to this Note.

(c) Attorneys' Fees.

(i) Maker shall reimburse Payee for all costs and expenses, incurred by Payee in connection with the enforcement of Payee's rights under this Note, including, without limitation, attorneys' fees (based upon the rates customarily charged by the attorneys to private clients), costs and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements or for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys' fees (based upon the rates customarily charged by the attorneys to private clients), costs and expenses incurred to protect Payee's security and attorneys' fees, costs and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) seeking relief from stay in a bankruptcy proceeding. The term "expenses" means any expenses incurred by Payee in connection with any of the out-of-court, or state, federal or bankruptcy proceedings referred to above, including, without limitation, the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by Payee in connection with any such proceeding.

(ii) Payee shall also be entitled to its attorneys' fees, costs and expenses incurred in any post-judgment proceedings to collect and enforce the judgment. This provision is separate and several and shall survive the merger of this Note into any judgment on this Note.

(d) Entire Agreement. This Note and the relevant provisions of the AHA constitute the entire agreement and understanding between and among the parties in respect of the subject matter of such agreements and supersede all prior agreements and understandings with respect to such subject matter, whether oral or written.

(e) Amendments. This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.]

(f) Time of the Essence. Time of the essence with respect to every provision hereof.

(g) Waivers by Maker. Except as otherwise provided in any agreement executed in connection with this Note, Maker waives: presentment; demand; notice of dishonor; notice of default or delinquency; notice of acceleration; notice of protest and nonpayment; notice of costs,

expenses or losses and interest thereon; and diligence in taking any action to collect any sums arising under this Note or in any proceeding against any of the rights or interests in or to properties securing payment of this Note.

(h) Non-waivers. No previous waiver and no failure or delay by Maker in acting with respect to the terms of this Note or the Equity Share Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Note, the Equity Share Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the Equity Share Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by this Note, the terms of this Note shall prevail.

**RIVERSIDE HOUSING DEVELOPMENT  
CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

**ATTACHMENT NO. 12  
EQUITY SHARE DEED OF TRUST**

Order No.  
Escrow No.  
Loan No.

WHEN RECORDED MAIL TO:  
City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805  
Attention: City Manager

APN 291-293-010

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST WITH ASSIGNMENT OF RENTS  
(SHORT FORM)**

This DEED OF TRUST, made as of \_\_\_\_\_, 201\_, between

RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation, a California non-profit public benefit corporation herein called TRUSTOR, whose address is:

3985 University Avenue, Riverside, California 92501

TICOR TITLE COMPANY OF CALIFORNIA, a California corporation, herein called TRUSTEE, and

the CITY OF MORENO VALLEY, a public body corporate and politic, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Moreno Valley,  
County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$209,190.00 and equity share payments(s) according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



incorporated by reference or contained herein, (3) the maintenance of four (4) rental units on the Site as affordable units to be rented to Low Income Households at Affordable Rent as provided for in the Affordable Housing Agreement and the CC&Rs as referenced in Exhibit "B" hereto; and (4) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust. THIS DEED OF TRUST SECURES A LOAN THAT HAS THE EFFECT OF A SHARED APPRECIATION LOAN.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Riverside County on August 18, 1964 at Book 3778, Page 347 in the office of the county recorder of Riverside County shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.



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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT "A"****LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 38 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-010

**EXHIBIT “B”****RIDER TO DEED OF TRUST**

Exhibit B to Deed of Trust with Assignment of Rents dated as of \_\_\_\_\_, 201\_, executed by Riverside Housing Development Corporation, a California nonprofit public benefit corporation, as “Trustor”, to Ticor Title Company of California, a California corporation, as Trustee, for the benefit of City of Moreno Valley, a municipal corporation, as “Beneficiary” (“Deed of Trust”).

1. **DEFAULT - OTHER DEEDS OF TRUST, DEED, COVENANTS CONDITIONS AND RESTRICTIONS (CC&Rs) AND AGREEMENT.** A default under any of the following shall, at Beneficiary’s option, constitute a default under this Deed of Trust:
  - (a) A default under that certain Affordable Housing Agreement (“Agreement”) dated as of September 22, 2015, between Trustor and Beneficiary or any default under any instrument delivered to City under the Agreement, whether senior or junior to this Deed of Trust (all capitalized terms not defined herein shall have the meanings established therefor under the Agreement);
  - (b) A default under the CC&Rs;
  - (c) A default under the Resale Restriction Agreement;
  - (d) A default under the Capital Recovery Note or the Capital Recovery Deed of Trust; or
  - (e) A default under Senior Note or the Senior Deed of Trust.
2. **DEFAULT - DEED OF TRUST.** A default under this Deed of Trust shall, at Beneficiary’s option, as appropriate, constitute a default under the deeds of trust or other instruments referenced in Paragraph 1(a) through (g), inclusive (collectively the “Other Deeds of Trust”), of this Rider.
3. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deeds of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.
4. **DUE ON SALE OR ENCUMBRANCE.** In the event of any Transfer (as defined below) of the Site, or any portion thereof or interest therein, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term “Transfer” means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Site, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Site, granting of an option to purchase any portion of or interest in the Site or any interest therein, or the lease of all or substantially all of the Site or of all or substantially all of the improvements situated on the Site. “Transfer” shall not include the leasing of individual dwelling units on the Site so long as Trustor complies with the provisions of the Agreement relating to such leasing activity. Transfer shall not include the sale, transfer, assignment, pledge,

Exhibit “B” to Attachment No. 12

Page 1 of 5

hypothecation or encumbrance by Participant's limited partner of its partnership interest to the extent permitted by the AHA nor shall Transfer include the removal or any general partner of Participant by the limited partner for cause and the replacement of such removed general partner by another person or entity in accordance with the terms of the Participant's partnership agreement to the extent permitted by the AHA. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

5. **PRIORITY OF DEED OF TRUST.** This Deed of Trust is subject and subordinate to the following: (i) the CC&Rs, (ii) the Resale Restriction Agreement and (iii) the Senior Deed of Trust.
6. **EQUITY SHARE PAYMENTS.** In addition to the principal amount of \$209,190, the promissory note secured by this deed of trust provides for equity sharing payments as described therein.

**DO NOT RECORD**

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

G. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

H. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such

Exhibit “B” to Attachment No. 12

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ATTACHMENT NO. 13

RESALE RESTRICTION AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

CITY OF MORENO VALLEY  
Attention: City Manager  
15177 Frederick Street  
Moreno Valley, California 92552-0805

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 291-293-010

RESALE RESTRICTION AGREEMENT  
OF CONDITIONS, COVENANTS AND RESTRICTIONS

This Resale Restriction Agreement (the "RRA") is entered into as of the dates written below, by and between the RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (the "Owner" or "Participant") and the CITY OF MORENO VALLEY, a public body corporate and politic (the "City"). Owner and the City may be individually referred to as a "Party" and collectively as the "Parties". The Parties desire to enter into this Agreement on the following terms and conditions:

1. RECITALS.

1.1 These Recitals refer to and utilize certain capitalized terms that are defined in Section 2 of this RRA. The Parties intend to refer to those definitions in conjunction with the use of capitalized terms in these Recitals. The Recitals are an integral part of this Agreement.

1.2 The City and the Owner entered into an agreement dated as of September 22, 2015, entitled "Affordable Housing Agreement" (herein the "AHA"). Under the AHA: (i) the City purchased certain property described in Exhibit "A" hereto (the "Site") with its funds (and with no equity by the Owner); (ii) the Owner promised the City that the Owner would improve and operate the Site as an affordable rental housing resource, in conformity with the AHA; and (iii) the City committed substantial moneys, as more particularly set forth in the AHA. All capitalized terms not

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



defined herewith shall have the meanings established in the AHA. The AHA is on file with the City as a public record and is deemed incorporated herein by reference.

2. **TERM OF AGREEMENT.** The term of this RRA shall commence as of the date of recordation of this RRA (the “Effective Date”) and shall expire at 11:59 p.m. on the last day that is the Fifty-fifth (55th) anniversary of the Effective Date (which period constitutes the “Term”).

3. **SALE RESTRICTIONS.** The Owner may not transfer the Site except as provided in, and in conformity with, provisions of this Agreement and the AHA. “Transfer” means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Site, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, a mortgage, a deed of trust (other than as expressly approved in writing by City) or an interest evidenced by a land sale contract by which possession of the Site is transferred and Owner retains title. Any Transfer without satisfaction of the provisions of this Agreement is prohibited. The Owner shall not Transfer the Site without prior written consent of the City. The AHA provides, in part (note: references to “Agreement” in the quoted material inset in this Section 3 are to the AHA):

“**7.11** Transfers of Interest in Agreement or of Site. Section 7.11, and all subsections of this Section 7.11, shall apply to transfers prior to the Transfer. Any transfers occurring or proposed after the Transfer are subject to the provisions therefor of the CC&Rs.

**7.11.1** Prohibition. The qualifications and identity of the Participant are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with the Participant. For the period commencing upon the date of this Agreement and until the end of the Required Covenant Period, no voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement, nor shall the Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Development thereon (excepting the rental of Units at Affordable Rent to Low Income Households in strict conformity with this Agreement and the CC&Rs) without prior written approval of City, except as expressly set forth herein.

**7.11.2** Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, the City shall not unreasonably withhold its approval of an assignment of this Agreement or conveyance of the Site, or any part thereof, in connection with the conveyance or dedication of any portion of the Site to the City, or the granting of easements or permits to facilitate construction of the Development.

In the event of a proposed assignment by Participant under subparagraphs 7.11.2 through 7.11.3, inclusive, Participant agrees that at least thirty (30) days prior to such assignment it shall give written notice to City including a request for approval of such assignment and satisfactory evidence that the assignee has assumed jointly with Participant the obligation to perform under this Agreement.

**7.11.3** City Consideration of Requested Transfer. City agrees that it will consider in good faith a request made pursuant to this Section 7.11 after the achievement of occupancy of one hundred percent (100%) of the Units in conformity with this Agreement following the completion of the Improvements, provided that: (i) the Participant causes to be delivered to City written evidence from HUD that HUD consents to and does not object to the action

requested; (ii) the Participant pays, or is prepared to pay concurrent with transfer, the amount due under the Equity Share Note in connection with such transfer; (iii) the Participant delivers written notice to City requesting such approval, which notice and the CC&Rs remain in full force and effect; (iv) the Participant is not in default of this Agreement or any attachments hereto; (v) the Participant provides detailed information regarding the transferee (the background, training, experience relative to the operation of affordable rental projects, and its capitalization) and of the proposed transfer (including price, terms of payment, time and place for closing); and/or the agreement of the transferee to be bound by and subject to all of the Development Documents, including without limitation, the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Capital Recovery Note, the Equity Share Note (which shall be adjusted upon transfer based upon the receipt of equity sharing moneys by the City, as more fully described in the Equity Share Note), the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust; and (vi) the Participant pays to City the sum of Five Thousand Dollars (\$5,000.00) (“Special Charges”), on a nonrefundable basis to assist City in defraying its cost to conduct due diligence, consider and process any such request (amounts so paid as Special Charges shall not be applied as payments due under the Equity Share Note or any other Note). Evidence regarding any proposed assignee or purchaser shall be detailed concerning the proposed assignee’s or purchaser’s development and/or operational qualifications and experience, its financial commitments and resources, and shall, in addition, describe in detail the financial terms of such assignment (including the consideration proposed to flow to the Participant or Related Entity and/or any of the Principals) in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 7.11, and as reasonably determined by City. Upon receipt of such request (including payment of the amount due as the equal share), the City shall evaluate each proposed transferee or assignee on the basis of its development and/or qualifications and experience in the operation of facilities similar to the Development, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 7.11 applies, which City reasonably determines does not possess sufficient qualifications. An assignment and assumption agreement in form satisfactory to City’s legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Participant’s written notice requesting approval of an assignment or transfer pursuant to this Section 7.11, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Participant shall promptly furnish to City such further information as may be reasonably requested. No such approval shall be given without written evidence of the consent or approval by HUD.

**7.11.4 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Participant and its permitted successors and assigns. Whenever the term “Participant” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.”

4. **CONSENT AND ACKNOWLEDGMENT OF OWNER.** The Owner agrees that the provisions of this Agreement are reasonable and appropriate in view of the following:

(i) The City is providing one hundred percent (100%) of the equity (and approximately 100% of the total funding) required for the purchase of the Site (which acquisition

was accomplished by purchase made by the City prior to entering into the Agreement) and the improvement of the Site under the Scope of Work: Budget. The City's willingness to enter into the AHA and devote the level of funding as prescribed under the AHA is based upon assurance that all Units on the Site will be maintained available at Affordable Rent for Low Income Households throughout the Required Covenant Period;

(ii) Participant is a sophisticated party with substantial experience in the acquisition, improvement and operation of affordable rental housing and with California real estate law. Participant has reviewed, and has consulted with legal counsel of Participant's choosing, concerning the Rules and Regulations and the AHA, including without limitation the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust, the Equity Share Note, the Capital Recovery Note, the Capital Recovery Deed of Trust, the CC&Rs, the RRA and the Equity Share Deed of Trust.

Accordingly, the Participant agrees and acknowledges that it is reasonable that the City have all rights and remedies, including without limitation equity sharing, limits upon resale or transfer, and such other restrictions or prohibitions as are provided under the AHA and its attachments including without limitation the CC&Rs, this RRA, the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust, the Equity Share Note and the Equity Share Deed of Trust.

5. **DEFAULTS AND REMEDIES.** The Owner's failure to comply with any term or provision of this Agreement will be deemed to be a violation of this Agreement. In addition, the Owner will be deemed to have violated this Agreement if the Owner defaults under any promissory note, deed of trust or lien, including if any judgment lien is recorded against the Site. Furthermore, the Owner will be deemed to have violated this Agreement if any foreclosure proceeding is instituted against the Site. Upon any such violation, the City will give a written notice ("Notice of Default") to the Owner specifying the nature of the violation. The Notice of Default will specify the amount of time that Owner has to correct the violation, but in no event will the Owner have more than thirty (30) days to correct such violation from the date such Notice of Default is mailed to the Owner. If the Owner does not correct the violation to the City's satisfaction within the specified time period, then the City may declare a default under this Agreement and will send Owner a notice that Owner has defaulted under this Agreement ("Declaration of Default"). The Owner will automatically be in default under this Agreement (without the City sending a Notice of Default) if the Owner or the Proposed Purchaser makes any misrepresentation of any nature whatsoever in connection with receiving any benefits under this Agreement, and upon any such event occurring, the City may immediately send the Owner a Declaration of Default. Upon the City sending the Owner a Declaration of Default, the City may apply to a court of competent jurisdiction for specific performance of this Agreement; for an injunction prohibiting a proposed sale or transfer in violation of this Agreement; for a declaration that a transfer in violation of this Agreement is void; for rescission of any sales contract that violates this Agreement; or for any other such relief at law or in equity as may be appropriate.

## 6. **PURCHASE OPTION UPON DEFAULT.**

6.1 **Purchase Option:** Notwithstanding, and in addition to, the remedies provided to the City in Section 5, the Owner hereby grants to the City the option ("Option") to purchase the Site once the City has given the Owner a Declaration of Default (pursuant to Section 5 hereof) following the giving of a Notice of Default and the failure of Owner to accomplish a cure as

provided under Section 5 hereof. The purchase Option will begin upon the date of the Declaration of Default and will continue until the thirtieth (30th) day following the final establishment of the Sales Price under the remainder of this Section 6.1 (which period constitutes the “Notice of Exercise Period”). Said Option to purchase is given in consideration of the economic benefits received by the Owner resulting from ownership of the Site made possible by the reduced purchase price by which the Owner initially acquired the Site from the City. The City may purchase the Site for the Sales Price.

(a) *Determination of Initial Value:* the value of the Site will be determined initially by the City or an appraiser selected by the City based upon the value of the Site (including improvements thereon) subject to the restrictions and limitations on the rental of all units on the Site to Low Income Households as provided under the CC&Rs; the amount as so established constitutes the “Initial Value”. In the event the City is obtaining an appraisal, it shall have sixty (60) days to obtain such appraisal and to tender its offer of sale. If an appraiser is utilized by the City, the appraiser shall be instructed to and the appraisal shall utilize the following parameters (the “Appraisal Parameters”): (A) it shall utilize and rely upon the income approach, and (B) it shall be based upon the use of the Site for rental housing (with rents conforming to the requirements of the CC&Rs throughout the Required Covenant Period. The City shall transmit in writing to the Owner following the determination by the City (or, if an appraiser is engaged for such purpose, the determination of value by such appraiser): (i) the determination of value by City or the appraiser, or (ii) notice that the City has elected not to proceed to exercise its rights to acquire the Site by means of the Option.

(b) Within ten (10) business days after the City has transmitted a writing setting forth the Initial Value to Owner, Owner shall deliver in writing to City a writing setting forth: (i) such Owner’s decision to sell the Site to the City for an amount equal to the Initial Value; (ii) the Owner’s opinion of value; or (iii) such Owner’s decision to retain an appraiser to provide an opinion of value of the Site subject to the Limitations on Use and utilizing the Appraisal Parameters. If the Owner approves the Initial Value, such amount shall be deemed to constitute the “Final Value.” In the event the Owner is obtaining an appraisal, it shall have sixty (60) days to obtain such appraisal and deliver its offer to sell to City based upon such value. An amount determined under (ii) or (iii) of this subsection (b) shall constitute the “Alternative Value.” In the event the Owner fails to deliver its written response to the City by the time set forth in this subsection (b), then the Initial Value shall be deemed to constitute the “Final Value.”

(c) Within ten (10) business days after the City receives a writing from Owner under subsection (b) of this Section 6.1, the City shall notify the Owner in writing that: (i) the City has elected to open escrow for the purchase of the Site based upon the Initial Value (which shall be applicable in the event the Owner agrees that the Initial Value shall constitute the Final Value, or if the Owner fails to deliver its written response under subsection (b) by the time prescribed therefor in such subsection (b) in which event the Initial Value shall be deemed to constitute the Final Value); (ii) the City has elected to open escrow for the purchase of the Site treating the Alternative Value as the Final Value; (iii) the City has elected to not proceed to exercise its rights to acquire the Site by means of the Option; or (iv) the City has elected to reject the Alternative Value and instead elects to appoint an independent MAI appraiser (the “Independent MAI Appraiser”) to determine the value of the Site. In the event the City elects option (iv), the City shall select the Independent MAI Appraiser; excepting that if the Owner had submitted concurrent with its submittal of the Alternative Value an appraisal by a member of the Member Appraisal Institute expressing the opinion that such Alternative Value is the value of the Site (as subject to the Limitations on Use and the Appraisal

Parameters), then the appraiser so selected by the Owner and, if an MAI appraiser is designated by the City, such appraiser, shall designate the Independent MAI Appraiser.

In the event the Independent MAI Appraiser is designated, such appraiser shall determine a value for the Site subject to the Limitations on Use and the Appraisal Parameters (the “Independent MAI Value”). The Owner and the City agree that, in such case, whichever of the Initial Value or the Alternative Value is closer to the Independent MAI Value, shall be deemed to constitute the “Final Value” for purposes of this Agreement and in connection with establishing the Sales Price for the Site.

(d) In connection with any purchase of the Site under this Section 6.1, the City shall receive credit for any indebtedness to City with respect to the Site, including without limitation the Equity Share Note, the Senior Note, and the Capital Recovery Note.

**6.2 Implementation of Sale Upon Establishment of Final Value.** Within five (3) working days following the establishment of the Final Value, the City shall: (i) deliver its written notice that it elects not to acquire the Site under Section 6.1; (ii) deliver to Owner both: (aa) a written notice of its election to exercise the Option in the form attached hereto as **Exhibit B** (the “Exercise Notice”), and (bb) two (2) copies of the City’s standard or customary real estate purchase and sale agreement for income-restricted homes (“Purchase Agreement”), both of which are duly-executed by the City. Upon Owner receiving the Exercise Notice and the two (2) duly-executed Purchase Agreements, Owner shall execute both copies of the Purchase Agreement and return one fully-executed original to the City. Owner’s failure to execute and deliver a copy of the Purchase Agreement in accordance with this Section 6.2 shall not affect the validity of the Purchase Agreement. The Purchase Agreement shall be immediately effective and binding on both Owner and the City without further execution by the Parties, on exercise of the Option in accordance with this Section 6.2. The City may, instead of purchasing the Site itself, assign its option and right to purchase the Site.

**6.3 PURCHASE OPTION DOES NOT LIMIT REMEDIES.** THE PURCHASE OPTION SHALL NOT LIMIT ANY REMEDIES AVAILABLE TO CITY OR AGENCY UNDER THE AHA, INCLUDING WITHOUT LIMITATION REMEDIES UNDER ONE OR MORE OF THE CC&Rs, THE EQUITY SHARE NOTE, THE EQUITY SHARE DEED OF TRUST, THE SENIOR NOTE, THE SENIOR DEED OF TRUST, THE CAPITAL RECOVERY NOTE, AND THE CAPITAL RECOVERY DEED OF TRUST. Without limitation as to other remedies that are available to the City, the obligation of the Owner to convey the Site to the City shall be enforceable by specific performance.

**7. NONLIABILITY OF THE CITY.** In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its Option to purchase under Section 6.1, nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its Option to purchase.

**8. BINDING ON SUCCESSOR AND ASSIGNS.** This Agreement is binding on the Owner and his or her heirs, successors, assigns, transferees, legatees, devisees, and all other persons that acquire any interest in the Site from Owner. It is also binding on anyone to whom the Owner sells, transfers, assigns or grants an interest in the Site, including any secured lender who obtains title through foreclosure or a “deed in lieu” of foreclosure. Furthermore, any purchasers, transferees,



assignees, legatees, devisees, donees or foreclosing lenders that acquire any, or the entire, interest in the Site of any nature whatsoever will be subject to the terms and conditions of this Agreement.

## 9. COVENANTS RUN WITH THE LAND.

9.1 Owner hereby declares its express intent that the provisions of this Agreement shall be deemed covenants running with the land and shall pass to and be binding upon all parties having any interest in the Site throughout the Term. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Site or any interest therein, as the case may be, shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties to such contract, deed, lease or any other such instrument have actual knowledge of this Agreement.

9.2 The Owner and the City hereby declare their understanding and intent that 1) this Agreement shall be construed as covenant and servitude running with the land pursuant to California Civil Code Section 1468 and not as conditions which might result in forfeiture of title by Owner; 2) the burden of the covenants and restrictions set forth in this Agreement touch and concern the Site in that the Owner's legal interest in the Site and all improvements thereon may be rendered less valuable thereby; and 3) the benefit of the covenants and restrictions set forth in this Agreement touch and concern the land by implementing provision by the City of affordable rental housing in implementing its housing goals and objectives and each of: means each of: (i) Community Development Act of 1974, 42 U.S.C. 5301 et seq. ("HCD Act") as amplified by regulations set forth at 24 C.F.R. 570; (ii) the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 C.F.R. Part 58; (iii) the HOME Regulations; (iv) Section 3; and (v) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, approved July 21, 2010, including regulations cited at 75 FR 64322.

9.3 All covenants and restrictions contained herein, without regard to technical classification or designation, shall be binding upon Owner for the benefit of the City and this Agreement shall run in favor of such parties for the entire Term of this Agreement, without regard to whether the City is an owner of any land or interest therein to which this Agreement relate.

## 10. GENERAL PROVISIONS.

10.1 **Amendment.** This Agreement may not be amended, modified or supplemented except by a written agreement executed by all the Parties.

10.2 **Assignment.** The City may transfer or assign all of its rights under this Agreement to any third party at any time without receiving Owner's prior consent.

10.3 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their permitted successors and assigns, and any reference to a Party hereto shall also be a reference to a permitted successor or assign.

10.4 **Controlling Law.** This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of California without reference to California's choice of law rules.

10.5 **Interpretation.** In the event any claim is made by any Party relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Party or his or its counsel. The Parties further agree that California Civil Code Section 1654 does not apply to this Agreement. This Agreement shall be interpreted to further the affordable housing objectives of the City and particularly the protection of long-term affordability covenants.

10.6 **Jurisdiction and Venue.** The Parties acknowledge and understand that the making of this Agreement is in Riverside County, California. Any suit, arbitrations, mediation or other remedial process shall be filed and maintained in Riverside County, California.

10.7 **Notices.** All notices, communications and deliveries hereunder shall be made in writing signed by the Party making the same, shall specify the Section hereunder pursuant to which it is given or being made, and shall be deemed given or made on either 1) the date delivered if delivered in person, 2) on the date initially received if delivered by facsimile transmission followed by registered or certified mail confirmation, 3) on the date delivered if delivered by a nationally recognized overnight courier service or 4) on the third (3rd) business day after it is mailed if mailed by registered or certified mail (return receipt requested) (with postage and other fees prepaid) as follows:

To Owner: Riverside Housing Development Corporation  
3985 University Avenue  
Riverside, CA 92501  
Attn: Bruce Kulpa

To the City: City of Moreno Valley  
Attention: City Manager  
11777 Frederick Street  
Moreno Valley, CA 92552-0805

or to such other representative or at such other address of a Party as such Party hereto may furnish to the other Parties in writing.

10.8 **Number; Gender.** Whenever the context so requires, the singular number shall include the plural and the plural shall include the singular, and the gender of any pronoun shall include the other genders.

10.9 **Remedies Cumulative.** The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any person may be lawfully entitled.

10.10 **Waiver.** The Parties hereto, by or pursuant to action taken by their respective members, partners or officers, may, to the extent legally permitted: (i) extend the time for the performance of any of the obligations or other acts of any other Party; (ii) waive any inaccuracies in the representations or warranties of any other Party contained in this Agreement or in any document or certificate delivered pursuant hereto; (iii) waive compliance or performance by any other Party with any of the covenants, agreements or obligations of such Party contained herein; and (iv) waive the satisfaction of any condition that is precedent to the performance by the Party so waiving of any of its obligations hereunder. Any agreement on the part of a Party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. A

waiver by one Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

IN WITNESS WHEREOF, the Parties have executed this Resale Restriction Agreement as of the dates written below:

**“OWNER”**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**

a California nonprofit public benefit corporation

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

Name: Bruce Kulpa

Title: Executive Director

**CITY:**

**CITY OF MORENO VALLEY**, a municipal corporation

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

City Manager

**LIST OF EXHIBITS:**

Exhibit A - Legal Description of Site



**EXHIBIT A****LEGAL DESCRIPTION OF THE SITE**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 38 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-010

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT B**  
**EXERCISE NOTICE**

Riverside Housing Development Corporation  
3985 University Avenue  
Riverside, CA 92501  
Attn: Executive Director of RHDC

Re: Exercise Notice pursuant to Resale Restriction Agreement (under Affordable Housing Agreement dated as of September 22, 2015 between the City of Moreno Valley ["City"] and Riverside Housing Development Corporation, a California nonprofit public benefit corporation ["Participant" or "Owner"]; the "Affordable Housing Agreement")

Gentlemen:

This constitutes Exercise Notice under Section 6.2 of the Resale Restriction Agreement made pursuant to the Affordable Housing Agreement. Section 6.2 provides, in part: "Upon Owner receiving the Exercise Notice and the two (2) duly-executed Purchase Agreements, Owner shall execute both copies of the Purchase Agreement and return one fully-executed original to the City. Owner's failure to execute and deliver a copy of the Purchase Agreement in accordance with this Section 6.2 shall not affect the validity of the Purchase Agreement." The City requests that you execute and return two (2) Purchase Agreements, executed by you, to: [insert addressee and address for City]. The Purchase Agreement provides, in part: a) the City shall bear customary costs of escrow, title and recording; b) escrow and other closing costs that are not customary and result from a request by Owner shall be borne by Owner; and c) the Owner shall bear the cost for any unpaid delinquent or nondelinquent property taxes, bonds and assessments and/or penalties and interest thereon due on the Site.

Escrow [has been opened with \_\_\_\_\_][will be opened with \_\_\_\_\_ promptly upon receipt of the signed Purchase Agreements].

Your cooperation in connection with effecting a closing as soon as feasible will be appreciated.

CITY:

CITY OF MORENO VALLEY, a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: City Manager

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 14**  
**SENIOR DEED OF TRUST**

Order No.  
Escrow No.  
Loan No.

WHEN RECORDED MAIL TO:  
City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805  
Attention: City Manager

APN 291-293-010

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST WITH ASSIGNMENT OF RENTS**  
**(SHORT FORM)**

This DEED OF TRUST, made as of \_\_\_\_\_, 201\_, between

RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation, a California non-profit public benefit corporation herein called TRUSTOR, whose address is:

3985 University Avenue, Riverside, California 92501

TICOR TITLE COMPANY OF CALIFORNIA, a California corporation, herein called TRUSTEE, and

the CITY OF MORENO VALLEY, a public body corporate and politic, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Moreno Valley,

County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$177,000.00 plus interest according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor incorporated by reference or contained herein, (3) the maintenance of four (4) rental units on the Site as affordable units to

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

be rented to Low Income Households at Affordable Rent as provided for in the Affordable Housing Agreement and the CC&Rs as referenced in Exhibit "B" hereto; (4) payment of amounts due under Section 3.4 of the Affordable Housing Agreement; and (5) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Riverside County on August 18, 1964 at Book 3778, Page 347 in the office of the county recorder of Riverside County shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

*Signature of Trustor*

On \_\_\_\_\_ before me,

RIVERSIDE HOUSING DEVELOPMENT CORPORATION,  
a California nonprofit public benefit corporation

personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person(s) whose names(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.

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

(This area for official notaries seal)

WITNESS my hand and official seal

SIGNATURE \_\_\_\_\_

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT "A"****LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 38 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-010

**EXHIBIT "B"****RIDER TO DEED OF TRUST**

Exhibit B to Deed of Trust with Assignment of Rents dated as of \_\_\_\_\_, 201\_, executed by Riverside Housing Development Corporation, a California nonprofit public benefit corporation, as "Trustor", to Ticor Title Company of California, a California corporation, as Trustee, for the benefit of City of Moreno Valley, a municipal corporation, as "Beneficiary" ("Deed of Trust").

1. **DEFAULT - OTHER DEEDS OF TRUST, DEED, COVENANTS CONDITIONS AND RESTRICTIONS (CC&Rs) AND AGREEMENT.** A default under any of the following shall, at Beneficiary's option, constitute a default under this Deed of Trust:
  - (a) A default under that certain Affordable Housing Agreement ("Agreement") dated as of September 22, 2015, between Trustor and Beneficiary or any default under any instruments delivered to City delivered under the Agreement, whether senior or junior to this Deed of Trust (all capitalized terms not defined herein shall have the meanings established therefor under the Agreement);
  - (b) A default under the CC&Rs;
  - (c) A default under the Resale Restriction Agreement;
  - (d) A default under the Capital Recovery Note or the Capital Recovery Deed of Trust; or
  - (e) A default under Senior Note or the Senior Deed of Trust.
2. **DEFAULT - DEED OF TRUST.** A default under this Deed of Trust shall, at Beneficiary's option, as appropriate, constitute a default under the deeds of trust or other instruments referenced in Paragraph 1(a) through (e), inclusive (collectively the "Other Deeds of Trust"), of this Rider.
3. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deeds of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.
4. **DUE ON SALE OR ENCUMBRANCE.** In the event of any Transfer (as defined below) of the Site, or any portion thereof or interest therein, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term "Transfer" means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Site, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Site, granting

of an option to purchase any portion of or interest in the Site or any interest therein, or the lease of all or substantially all of the Site or of all or substantially all of the improvements situated on the Site. "Transfer" shall not include the leasing of individual dwelling units on the Site so long as Trustor complies with the provisions of the Agreement relating to such

Exhibit "B" to Attachment No. 14

Page 1 of 5

leasing activity. Transfer shall not include the sale, transfer, assignment, pledge, hypothecation or encumbrance by Participant's limited partner of its partnership interest to the extent permitted by the AHA nor shall Transfer include the removal or any general partner of Participant by the limited partner for cause and the replacement of such removed general partner by another person or entity in accordance with the terms of the Participant's partnership agreement to the extent permitted by the AHA. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

5. **PRIORITY OF DEED OF TRUST.** This Deed of Trust is subject and subordinate to the following: (i) the CC&Rs.



## DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

G. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

H. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such

successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary means the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**DO NOT RECORD** REQUEST FOR FULL RECONVEYANCE

TO TICOR TITLE COMPANY OF CALIFORNIA, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,  
Note and Reconveyance to

\_\_\_\_\_

*Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.*

**DEED OF TRUST  
CALIFORNIA,  
with power of sale**

**TICOR TITLE COMPANY OF  
TRUSTEE**

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

ATTACHMENT NO. 15

CAPITAL RECOVERY NOTE  
(This Note is secured by a deed of trust)

\$243,675.00

Moreno Valley, California

\_\_\_\_\_ 1, 201\_

Property Address: 22899 Allies Place  
Moreno Valley, CA 92551

Maturity: July 1, 2071

**FOR VALUE RECEIVED**, the undersigned (“Maker”) promises to pay to the City of Moreno Valley (“Holder”) at 14177 Frederick Street, Moreno Valley, CA 92552, or at such other address as Holder may direct from time to time in writing, the sum of Two Hundred Forty-Three Thousand Six Hundred Seventy-Five Dollars (\$243,675.00) (the “Capital Recovery Note Amount”). Such amounts, if any, as become payable to Holder pursuant to Section 3.4 of the “Agreement” (as defined below) shall be added to the principal amount payable hereunder. All sums hereunder shall be payable in lawful money of the United States of America.

**1. Loan Agreement.** This Capital Recovery Note (the “Capital Recovery Note”) is made and delivered pursuant to and in implementation of the Affordable Housing Agreement entered by and between the Holder and the Maker dated as of September 22, 2015 (the “Agreement”), a copy of which is on file as a public record with the Holder. The Agreement is incorporated herein by this reference. The Maker acknowledges that but for the execution of this Capital Recovery Note, the Holder would not enter into the Agreement or make the loans contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

**2. Interest Rate.** The Capital Recovery Amount shall bear interest at the rate of zero percent (0%) per annum.

**3. Payments; Time of Payment.** On or before May 1, commencing May 1, 2015, Make shall delivery to Holder a report of Residual Receipts in conformity with the “Form of Residual Receipts Report” as prescribed by the Agreement. Maker shall make annual payments to Holder on the first day of each July commencing July 1, 2015 and continuing on the first day of each July thereafter in each year to and including July 1, 2071 in the amount of fifty percent (50.00%) of the “Residual Receipts” (as defined in the Agreement) for the Development for the preceding Year.

**4. Acceleration.** The whole of the Capital Recovery Note Amount shall, at the election of the City, become due and be immediately payable to the Holder by the Maker upon the occurrence of any of the following events: (a) the sale or transfer of the Property, including, without limitation, the lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (i) the rental of the Required Affordable Units at the Site to Low Income Households at Affordable Rent, or (ii) the transfer of the Property permitted by the Agreement and as to which the prior written approval of the City has been obtained. The failure by Holder to elect to accelerate upon the occurrence of an event within a particular time after the occurrence of such event

shall not operate as a waiver of Holder's right to accelerate and to declare all amounts due hereunder to be immediately payable.

**5. Security for Note.** This Capital Recovery Note shall be secured by a deed of trust and rider thereto of even date herewith encumbering the Site based upon the amount hereof ("Capital Recovery Deed of Trust"), executed by Maker, as trustor, in favor of Holder, as beneficiary.

**6 Prepayment of Note.** Maker may prepay this Note to Holder, provided that any prepayment must be in full and not in part. Prepayment shall not, however, release Maker from the requirements of CC&Rs, the Resale Restriction Agreement, the Senior Note, the Equity Share Note, or the other provisions of the Agreement. In addition, prepayment shall be treated in the same manner as a refinancing of the Property.

**7. Holder May Assign.** Holder may, at its option, assign its right to receive payment under this Capital Recovery Note without necessity of obtaining the consent of the Maker.

**8. Maker Assignment Prohibited.** In no event shall Maker assign or transfer any portion of this Capital Recovery Note, or its obligations as to the Capital Recovery Note Amount and/or under the Agreement without the prior express written consent of the Holder.

**9. Joint and Several.** The undersigned, if more than one person, shall be jointly and severally liable hereunder.

**10. Attorneys' Fees and Costs.** In the event that any action is instituted to enforce payment under this Capital Recovery Note, the parties agree the non-prevailing party shall be responsible for and shall pay to the prevailing party all court costs and all attorneys' fees (based upon the rates customarily charged by the attorneys to private clients) incurred in enforcing this Capital Recovery Note.

**11. Amendments.** This Capital Recovery Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Capital Recovery Note so as to become a permanent part thereof.

**12. Maker's Waivers.** Maker waives any rights to require the Holder to: (a) demand payment of amounts due (known as "presentment"), (b) give notice that amounts due have not been paid (known as "notice of dishonor"), and (c) obtain an official certification of nonpayment (known as "protest").

**13. Notice.** Any notice that must be given to Maker under this Capital Recovery Note shall be given by personal delivery or by mailing it by certified mail addressed to Maker at the Property address above or such other address as Maker shall direct from time to time in writing. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment. Any notice to Holder shall be given by certified mail at the address stated above.

**14. Successors Bound.** This Capital Recovery Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, Maker has executed this Capital Recovery Note as of the date set forth below.

**MAKER:**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**

a California nonprofit public benefit corporation

Dated: \_\_\_\_\_, 201\_

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

Name: Bruce Kulpa

Title: Executive Director

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



ATTACHMENT NO. 16

CAPITAL RECOVERY DEED OF TRUST

Order No.  
Escrow No.  
Loan No.

WHEN RECORDED MAIL TO:  
City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805  
Attention: City Manager

APN 291-293-010

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST WITH ASSIGNMENT OF RENTS  
(SHORT FORM)

This DEED OF TRUST, made as of \_\_\_\_\_, 201\_, between

RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation, a California non-profit public benefit corporation herein called TRUSTOR, whose address is:

3985 University Avenue, Riverside, California 92501

TICOR TITLE COMPANY OF CALIFORNIA, a California corporation, herein called TRUSTEE, and

the CITY OF MORENO VALLEY, a public body corporate and politic, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Moreno Valley,

County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$243,675.00 plus interest according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor incorporated by

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

reference or contained herein, (3) the maintenance of four (4) rental units on the Site as affordable units to be rented to Low Income Households at Affordable Rent as provided for in the Affordable Housing Agreement and the CC&Rs as referenced in Exhibit "B" hereto; (4) payment of amounts due under Section 3.4 of the Affordable Housing Agreement; and (5) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Riverside County on August 18, 1964 at Book 3778, Page 347 in the office of the county recorder of Riverside County shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

*Signature of Trustor*

On \_\_\_\_\_ before me,

RIVERSIDE HOUSING DEVELOPMENT CORPORATION,  
a California nonprofit public benefit corporation

\_\_\_\_\_ personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(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.

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

(This area for official notaries seal)

WITNESS my hand and official seal

SIGNATURE \_\_\_\_\_

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT "A"****LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 38 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-010

**EXHIBIT “B”****RIDER TO DEED OF TRUST**

Exhibit B to Deed of Trust with Assignment of Rents dated as of \_\_\_\_\_, 201\_, executed by Riverside Housing Development Corporation, a California nonprofit public benefit corporation, as “Trustor”, to Ticor Title Company of California, a California corporation, as Trustee, for the benefit of City of Moreno Valley, a municipal corporation, as “Beneficiary” (“Deed of Trust”).

1. **DEFAULT - OTHER DEEDS OF TRUST, DEED, COVENANTS CONDITIONS AND RESTRICTIONS (CC&Rs) AND AGREEMENT.** A default under any of the following shall, at Beneficiary’s option, constitute a default under this Deed of Trust:
  - (a) A default under that certain Affordable Housing Agreement (“Agreement”) dated as of September 22, 2015, between Trustor and Beneficiary or any default under any instruments delivered to the City under the Agreement, whether senior or junior to this Deed of Trust (all capitalized terms not defined herein shall have the meanings established therefor under the Agreement);
  - (b) A default under the CC&Rs;
  - (c) A default under the Resale Restriction Agreement;
  - (d) A default under the Equity Share Deed of Trust;
  - (e) A default under the Capital Recovery Note or the Capital Recovery Deed of Trust; or
  - (f) A default under Senior Note or the Senior Deed of Trust.
2. **DEFAULT - DEED OF TRUST.** A default under this Deed of Trust shall, at Beneficiary’s option, as appropriate, constitute a default under the deeds of trust or other instruments referenced in Paragraph 1(a) through (g), inclusive (collectively the “Other Deeds of Trust”), of this Rider.
3. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deeds of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.
4. **DUE ON SALE OR ENCUMBRANCE.** In the event of any Transfer (as defined below) of the Site, or any portion thereof or interest therein, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term “Transfer” means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Site, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Site, granting of an option to purchase any portion of or interest in the Site or any interest therein, or the lease of all or substantially all of the Site or of all or substantially all of the improvements

Exhibit “B” to Attachment No. 16

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situated on the Site. “Transfer” shall not include the leasing of individual dwelling units on the Site so long as Trustor complies with the provisions of the Agreement relating to such leasing activity. Transfer shall not include the sale, transfer, assignment, pledge, hypothecation or encumbrance by Participant’s limited partner of its partnership interest to the extent permitted by the AHA nor shall Transfer include the removal or any general partner of Participant by the limited partner for cause and the replacement of such removed general partner by another person or entity in accordance with the terms of the Participant’s partnership agreement to the extent permitted by the AHA. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

5. **PRIORITY OF DEED OF TRUST.** This Deed of Trust is subject and subordinate to the following: (i) the CC&Rs, (ii) the Resale Restriction Agreement, (iii) the Senior Deed of Trust and (iv) the Equity Share Deed of Trust.

## DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

G. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

H. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such

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successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary means the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**DO NOT RECORD** REQUEST FOR FULL RECONVEYANCE

TO TICOR TITLE COMPANY OF CALIFORNIA, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,  
Note and Reconveyance to

\_\_\_\_\_

*Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.*

**DEED OF TRUST  
CALIFORNIA,  
with power of sale**

**TICOR TITLE COMPANY OF  
TRUSTEE**



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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 17**  
**PARTICIPANT PRO FORMA**

[to come]

**Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING**



KEYSER MARSTON ASSOCIATES™  
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

**MEMORANDUM**

**ADVISORS IN:**  
Real Estate  
Redevelopment  
Affordable Housing  
Economic Development

**To:** Shanikqua Freeman, Housing Programs Coordinator  
City of Moreno Valley

**SAN FRANCISCO**  
A. Jerry Keyser  
Timothy C. Kelly  
Kate Earle Funk  
Debbie M. Kern  
Reed T. Kawahara  
David Doezema

**From:** Kathleen Head  
Tim Bretz

**Date:** September 16, 2015

**LOS ANGELES**  
Kathleen H. Head  
James A. Rabe  
Gregory D. Soo-Hoo  
Kevin E. Engstrom  
Julie L. Romey

**Subject:** 22899 Allies Place: HOME Subsidy Layering Review

**SAN DIEGO**  
Paul C. Marra

At your request, Keyser Marston Associates, Inc. (KMA) prepared a subsidy layering review for the four-unit 22899 Allies Place Apartments (Project) being proposed by the Riverside Housing Development Corporation (Developer). The purpose of this subsidy layering review is to quantify the amount of HOME Program (HOME) funds, in combination with other governmental assistance, that is necessary to provide the proposed affordable housing units. The HOME funds are received by the City of Moreno Valley (City) from the United States Department of Housing and Urban Development (HUD).

**EXECUTIVE SUMMARY**

The Developer is proposing to rehabilitate a four-unit apartment complex located at 22899 Allies Place (Site). The Project consists of four one-bedroom units, which will be subject to long-term income and affordability covenants.

The KMA pro forma analysis estimates the Project costs at \$695,000. Based on the available information, KMA estimates that the Developer will be able to obtain a \$53,000 conventional loan for the Project. In addition, the Developer will defer \$13,000 of the Developer Fee. This leaves an approximately \$629,000 unfunded financial gap. The Developer is requesting \$629,000 in HOME funds assistance from the City, which is equal to the financial gap identified in the KMA analysis.

The results of the subsidy layering review can be described as follows:

1. The analysis demonstrates that the proposed \$629,000 in HOME funds assistance is necessary to provide the proposed affordable housing units.
2. The HOME Program regulations impose Davis Bacon wage requirements on projects that include 12 or more designated HOME units. Given that the Project includes four units, each of which to be designated as a HOME unit, the HOME funds assistance will not trigger Davis Bacon wage requirements.
3. The Project fulfills the HOME Program requirement that at least 20% of the units assisted with HOME funds be affordable to very-low income households.
4. The Developer has demonstrated the capacity and financial wherewithal to undertake the proposed Project.
5. The Developer did not provide a formal market study for the Project. However, KMA analyzed the rent comparables submitted by the Developer, as well as independently reviewed the market conditions in the vicinity of the Site. The affordable rents proposed by the Developer are sufficiently below the area's market rents to generate demand for the units.

**PROJECT DESCRIPTION**

The proposed scope of development can be described as follows:

1. The Site consists of approximately 7,200 square feet of land area.
2. The Project consists of four existing one-bedroom units that are proposed to be rehabilitated.
3. The Project's affordability mix will consist of one Low HOME unit and three High HOME units.

**FINANCIAL GAP ANALYSIS**

KMA prepared a pro forma analysis to assist in evaluating the Developer's proposal. The pro forma analysis follows this memorandum, and is organized as follows:

Table 1:	Estimated Development Costs
Table 2:	Estimated Stabilized Net Operating Income
Table 3:	Financial Gap Calculation

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

## **Estimated Development Costs (Table 1)**

KMA reviewed the Developer's development cost estimate, and then independently prepared a pro forma analysis for the Project. The resulting development cost estimates for the Project are as follows:

### ***Property Assemblage Costs***

The Developer is proposing to purchase the property on the open market for \$306,000, or \$76,500 per unit. An appraisal for the property is currently being prepared. If the appraised value of the property is less than the proposed purchase price, the KMA analysis will need to be updated accordingly.

### ***Direct Costs***

The direct cost estimates assume that neither State of California nor Federal Davis Bacon prevailing wage requirements will be imposed on the Project. The Developer provided a construction cost estimate for the Project that was prepared by an independent contractor. This estimate includes a detailed breakdown of the rehabilitation costs. The direct costs applied in the analysis can be summarized as follows:

1. The Developer estimates the on-site improvement costs at \$20,000.
2. The Developer estimates the demolition costs at \$27,000.
3. The Developer estimates the rehabilitation costs at \$265,000, or approximately \$66,300 per unit.

KMA assumes that contractors' fees, general requirements and insurance costs are included in the direct costs outlined above. Based on the information provided, KMA estimates the total direct costs at \$312,000.

### ***Indirect Costs***

KMA utilized the following assumptions for estimating the Project's indirect costs:

1. The architecture, engineering and consulting costs are estimated at approximately 1% of acquisition and direct costs.
2. The Developer estimated the public permits and fees and other indirect costs at \$23,000, or \$5,600 per unit. City staff should verify the accuracy of this estimate.

3. The Developer set the Developer Fee at \$40,000, which is equal to 6% of total development costs.

### ***Financing Costs***

The Developer intends to fund the construction of the Project with available cash-on-hand. As such, no construction period interest costs will be incurred.

The Developer included a \$7,000 capitalized operating reserve in the Project budget. This is a reserve allowance that is typically included in projects with limited cash flow.

### ***Total Development Costs***

As shown in Table 1, KMA estimates the total development costs at approximately \$695,000. This equates to \$173,800 per unit.

### **Estimated Stabilized Net Operating Income (Table 2)**

The Project's funding sources include a conventional loan and HOME funds. The HOME Program publishes household income limits and rent standards that must be applied to the HOME-designated units.

The 2015 HOME Program rents for one-bedroom units, net of the applicable utility allowance, are as follows:<sup>2</sup>

1. Low HOME Units - \$536
2. High HOME Units - \$705

The Developer is concerned about the marketability of the High HOME units at the statutorily set maximum rent of \$705 per month. As a reflection of this concern, the Developer proposes to set the rent for the High HOME units at \$600 per month.

To assist in projecting the achievable rents, KMA undertook a review of the rents currently being charged for similar apartment projects in the vicinity of the Site. Based on this review, KMA estimates that the average market rate rent is approximately \$750 per month. Therefore, the proposed \$600 per month rent for the High HOME units is approximately 20% less than the prevailing market rent. A discount of this magnitude should be more than sufficient to attract tenants to the units.

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<sup>2</sup> The monthly utility allowance is estimated at \$92 for a one-bedroom unit.

### ***Estimated Effective Gross Income***

KMA estimates the Project's effective gross income at \$26,400 based on the following assumptions:

1. The gross income is estimated at \$28,000.
2. Laundry and miscellaneous income is estimated at \$11 per unit per month, or approximately \$500 per year.
3. A vacancy and collection allowance equal to 7.5% of gross income is provided. This equates to \$2,100.

### ***Estimated Operating Expenses***

The residential operating expenses are estimated at \$21,500 based on the following assumptions:

1. The general operating expenses are estimated at \$4,630 per unit per year.
2. KMA assumes that the Developer will apply for the property tax abatement that is accorded to non-profit organizations that own apartments restricted to households earning less than 80% of the median income.
3. The annual replacement reserve deposits are estimated at \$300 per unit per year.

### ***Estimated Stabilized Net Operating Income***

The Project's effective gross income is estimated at \$26,400, and the operating expenses are estimated at \$21,500. This results in estimated stabilized net operating income of \$4,900.

### **Financial Gap Calculation**

The financial gap is estimated by deducting the available outside funding sources from the Project's total development costs. The Developer intends to obtain a \$53,000 conventional permanent loan as the only outside funding source for the Project. The loan amount is based on the following assumptions:

1. A stabilized net operating income of \$4,900;
2. A 1.25 debt service coverage ratio;

- 3. A 30-year amortization period; and
- 4. A 6.25% interest rate.

In addition, the Developer intends to defer \$13,000, or 33% of the total Developer Fee that is included in the Project budget. As such, the total available outside funding sources for the Project are estimated at \$66,000.

**Calculation of Warranted HOME Funds Assistance**

Based on the assumptions outlined in this analysis, KMA calculates the warranted HOME funds assistance as follows:

Total Development Costs	\$695,000
(Less) Total Available Funding Sources	(66,000)
Warranted HOME Funds Assistance	\$629,000
Per Unit	\$157,250

The Developer is requesting \$629,000 in HOME funds assistance from the City. This assistance request is equal to the financial gap identified in the KMA analysis. As such, KMA concludes that the Developer’s request for \$629,000 in HOME funds assistance is warranted by the Project’s financial characteristics.

**HOME PROGRAM REQUIREMENTS (TABLE 4)**

The City must comply with the following HOME Program requirements:

**Layering Requirements**

HOME Program regulations require projects to provide a layering analysis demonstrating that the HOME assistance is required to provide affordable housing. Based on the results of the preceding analysis, it is the KMA conclusion that the Developer’s request for \$629,000 in HOME funds assistance is warranted by the Project economics. Thus, it can be concluded that the assistance package complies with the HOME layering requirement.

**HOME Unit Designation**

HUD establishes two tests for quantifying the number of units in the Project that must be designated as HOME units. One test is referred to as the Development Cost Test, and the other test is called the Subsidy Limit Test. These tests can be described as follows:

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



### ***Development Cost Test***

The Development Cost Test calculates the minimum number of HOME units based on the percentage of the Project's total costs that are funded with the HOME Program assistance. The calculation for the Project is:

1. \$629,000 in HOME funds assistance is assumed to be provided.
2. KMA estimates the Project costs at \$695,000.
3. Based on the preceding assumptions, the HOME funds assistance is equal to 91% of the Project costs.
4. Under the Development Cost Test, 91% of the four units must be designated as HOME units. This equates to 3.62 units, which is rounded up to four units.

### ***Subsidy Limit Test***

HUD establishes subsidy limits based on the number of bedrooms included in the HOME-assisted units. The 2015 HOME Subsidy Limit for a one-bedroom unit in Riverside County is \$157,466. Based on the amount of HOME funds included in the Project, the Subsidy Limit Test results in a four-unit requirement.

### ***Designated HOME Units***

Both the Development Cost Test and the Subsidy Limit Test result in the requirement for four designated HOME units. Thus, per the layering requirements, the City must designate all four units in the Project as HOME units.

The HOME Program also requires at least 20% of the units assisted with HOME funds be affordable to very-low income households, and the balance of the units be reserved for low income households. One unit in the Project will be restricted to Low HOME households and the remaining three units will be restricted to High HOME households. As such, the Project meets the income allocation requirements imposed by the HOME Program.

### ***Analysis of Market Conditions***

The HOME Program requires Participating Jurisdictions to verify that the affordable rents in the Project will be sufficiently lower than the market rents in the Project's market area to generate adequate demand for the affordable units. The Developer has not obtained a formal market study for the Project. However, based on their experience in the market area, they are estimating the achievable rents at \$600 per month.

KMA undertook a review of apartment projects in the vicinity of the Site, and found average market rates at \$750 per month. The Developer's proposal to rent the High HOME units at \$600 per month represents a 20% discount from the prevailing market rents. The discount for the Low HOME unit is 29%. It is KMA's opinion that discounts of this magnitude will be more than sufficient to attract qualified tenants to the units.

### **Developer's Financial Capacity**

The HOME Program regulations require Participating Jurisdictions to assess the development capacity and fiscal soundness of developers requesting HOME funds assistance. HUD guidance related to this evaluation indicates that the Developer's recent, similar, successful experience developing and operating comparable projects may be used to assist in establishing the Developer's capacity to undertake a project that is requesting HOME funds assistance.

The Developer's financial capacity can be summarized as follows:

1. The Developer submitted audited financial statements for 2013 and 2014 that comply with the generally accepted accounting principles (GAAP). The financial statements show that the Developer has sufficient liquid assets and the financial strength to complete the Project.
2. The evidence of the Developer's financial strength is further bolstered by the fact that the Developer is proposing to self-fund the acquisition and construction costs with cash-on-hand.
3. The Developer submitted a portfolio of 500 rental units that are owned and/or managed by the Developer.

It is the KMA conclusion that the Developer has the development capacity and fiscal soundness to undertake the proposed Project.

### **SUMMARY OF FINDINGS**

1. It is the KMA conclusion that the proposed \$629,000 in HOME funds assistance is necessary to provide the proposed affordable housing units.
2. Each of the four units in the Project must be designated as HOME units. At least one of these units must be designated as a Low HOME unit.
3. The provision of \$629,000 in HOME funds assistance to the Project will not trigger Davis Bacon wage requirements.

4. The Developer has demonstrated the development capacity and fiscal soundness to undertake the Project.
5. The Developer's proposed affordable rents are 20% to 29% below the currently prevailing market rents in the vicinity of the Site.
6. An appraisal of the property is currently being conducted. If the appraised value is less than the proposed purchase price, the results of this HOME layering analysis must be re-evaluated.
7. The financial structure of the Project requires the City to subordinate the \$629,000 HOME Loan to a \$53,000 first trust deed from a private lender. The HOME Loan Agreement should be structured to provide the City with the right to cure any defaults with regards to the first trust deed to ensure that the property is not foreclosed upon. This is a critical transaction point given that the City will be required to repay any outstanding balance of the HOME Loan if the affordability restrictions are removed during the HOME Loan's affordability period.
8. It is anticipated that the Developer will receive 100% of the Project's residual receipts until the Deferred Developer Fee is repaid in full. Upon repayment of the Deferred Developer Fee, it is anticipated that the HOME Loan will be repaid from 50% of the Project's residual receipts. It is important to note, that these residual receipts payments are not projected to be sufficient to repay the HOME Loan during the affordability period. As such, the City should anticipate being required to forgive a portion of the HOME Loan at the end of the term.

**ESTIMATED DEVELOPMENT COSTS  
22899 ALLIES PLACE  
MORENO VALLEY, CALIFORNIA**

<b>I. Property Acquisition Costs</b>	1	<b>4 Units</b>	<b>\$76,500 /Unit</b>	<b>\$306,000</b>
<b>II. Direct Costs</b>	2			
On-site Improvements		7,200 Sf Land	\$3 /Sf Land	\$20,000
Demolition Costs				27,000
Rehabilitation Costs		4 Units	\$66,295 /Unit	265,000
<b>Total Direct Costs</b>		<b>2,580 Sf GBA</b>	<b>\$121 /Sf GBA</b>	<b>\$312,000</b>
<b>III. Indirect Costs</b>				
Architecture, Engineering & Consulting		1% Acq + Direct Costs		\$7,000
Public Permits & Fees	3	4 Units	\$5,625 /Unit	23,000
Developer Fee	4	6% Total Development Costs		40,000
<b>Total Indirect Costs</b>				<b>\$70,000</b>
<b>IV. Financing Costs</b>				
Interest During Construction	5			\$0
Operating Reserve		3 Months Oper Exp & Debt Svc Pmts		7,000
<b>Total Financing Costs</b>				<b>\$7,000</b>
<b>V. Total Development Costs</b>		<b>4 Units</b>	<b>\$173,750 /Sf GBA</b>	<b>\$695,000</b>

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

<sup>1</sup> An appraisal was not provided for review.  
<sup>2</sup> Based on a contractor's bid provided by the Developer. It is assumed that contractor fees and general requirements are included in the estimates. The estimates assume that neither State of California prevailing wage nor Federal Davis Bacon wage requirements will be imposed on the Project.  
<sup>3</sup> Based on Developer estimate. The estimate should be verified by City staff.  
<sup>4</sup> Based on Developer estimate.  
<sup>5</sup> The Developer will finance the construction costs with cash-on-hand.

**ESTIMATED STABILIZED NET OPERATING INCOME  
22899 ALLIES PLACE  
MORENO VALLEY, CALIFORNIA**

<b>I. Gross Residential Income</b>	1			
<u>1-Bedroom Units @ (645-Sf)</u>				
Low HOME	1	Unit	\$536 /Unit/Month	6,400
High HOME	3	Units	\$600 /Unit/Month	21,600
<b>Gross Income</b>				\$28,000
Laundry & Miscellaneous Income	4	Units	\$11 /Unit/Month	500
(Less) Vacancy & Collection Allowance	7.50%	Gross Income		(2,100)
<b>Effective Gross Income</b>				<u>\$26,400</u>
<b>II. Operating Expenses</b>				
General Operating Expenses	4	Units	\$4,630 /Unit	\$18,500
Property Taxes	2	4 Units	\$449 /Unit	1,800
Replacement Reserve	4	Units	\$300 /Unit	1,200
<b>Total Operating Expenses</b>				<u>\$21,500</u>
<b>III. Net Operating Income</b>				<u>\$4,900</u>

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

<sup>1</sup> Based on Riverside County Incomes distributed by HUD, and rents published in 2015 by the HOME Program. Utility allowances per the Housing Authority of the County of Riverside: \$92 for one-bedroom units. The Developer stated that the High HOME units would be rented at \$600 per unit due to marketability concerns.

<sup>2</sup> Assumes that the Developer will receive the property tax abatement accorded to non-profit housing organizations that own apartment units restricted to households earning less than 80% AMI.

**FINANCIAL GAP CALCULATION  
22899 ALLIES PLACE  
MORENO VALLEY, CALIFORNIA**

**I. Available Funding Sources**

**Permanent Loan**

<sup>1</sup>

Net Operating Income	\$4,900	NOI (See Table 2)		
Income Available for Debt Service	1.25	DCR	\$3,920	Debt Service
Interest Rate	6.25%	Interest Rate	7.39%	Mortgage Constant

**Total Permanent Loan** **\$53,000**

**Deferred Developer Fee** **33% Total Developer Fee** **\$13,000**

**Total Available Funding Sources** **\$66,000**

**II. Financial Gap Calculation**

Total Construction Costs	\$695,000
(Less) Total Available Funding Sources	<u>(66,000)</u>

**III. Financial Gap** **4 Units** **\$157,300 /Unit** **\$629,000**

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

<sup>1</sup> Based on a 30-year amortization term.

HOME UNIT DESIGNATION  
 22899 ALLIES PLACE  
 MORENO VALLEY, CALIFORNIA

I. Development Costs Test

HOME Funds Requested	\$629,000
Total Development Costs	\$695,000
HOME Funds as % of Development Costs	91%

HOME Unit Requirement 4 Units

II. Subsidy Limit Test

HOME Funds Requested \$629,000

	<u>Subsidy Limit / Unit</u>	<u>Distribution of HOME Funds Requested</u>	<u>Number of HOME Units</u>
One-Bedroom Units	\$157,466	\$629,000	4 Units
HOME Unit Requirement		\$629,000	4 Units

III. Minimum Number of HOME Designated Units 4 Units

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

ATTACHMENT NO. 18

CITY DEED

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

[Empty box for recording information]

Documentary Transfer Tax: \$ \_\_\_\_\_  
Based on Full Value of Real Property Conveyed

This document is exempt from payment of a recording fee pursuant to  
government Code Section 27383.

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The CITY OF MORENO VALLEY, a municipal corporation (the "City"), hereby grants to RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation ("Participant" or "Grantee"), the real property described in Exhibit A attached hereto and incorporated herein (the "Property"), subject to existing easements, restrictions and covenants of record, the provisions set forth in Sections 1 and 2 hereof and the requirements of the Affordable Housing Agreement (the "AHA") between the Participant and the City as parties, dated as of September 22, 2015. All capitalized terms not defined herein shall have the respective meanings established therefor in the AHA. The AHA is on file with the City as a public record and its provisions, including without limitation the attachments thereto, are deemed to be incorporated herein by reference.

1. **Affordability Restrictions.** The use of the Property is limited to rental to households of limited income at a rent that does not exceed affordable rent, all as more particularly set forth a "Regulatory Agreement," in the form prescribed as Attachment No. 9 to the AHA (such Regulatory Agreement is sometimes referred to in the AHA as the "CC&Rs"), the Regulatory Agreement, which is to be recorded of even date herewith, is deemed to be incorporated herein by reference as fully as if set forth at length herein.

2. **Nondiscrimination.** 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,

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



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

3. The Property is required to be maintained as an affordable rental housing resource for an approximately fifty-six (56) year period commencing with the recording of this deed and ending as of July 1, 2071 (which period constitutes the "Required Covenant Period"). At all times during the Required Covenant Period, the prior written permission of the City is required for the conveyance of the Property.

**CITY:**

**CITY OF MORENO VALLEY**, a municipal corporation

\_\_\_\_\_  
City Manager

**ACKNOWLEDGMENT BY GRANTEE**

Grantee acknowledges and concurs in the foregoing, including the provisions of Sections 1, 2 and 3.

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT "A"****LEGAL DESCRIPTION OF PROPERTY**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 38 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-010

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

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- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

ATTACHMENT NO. 19

FORM OF RESIDUAL RECEIPTS REPORT

City of Moreno Valley  
(22899 Allies Place Affordable Housing Project)

Residual Receipts Report  
for the Year Ending \_\_\_\_\_

Date Prepared \_\_\_\_\_

Please complete the following information and execute the certification at the bottom of this form.

**Annual Project Revenue**

Please report Annual Project Revenue for the year ending \_\_\_\_\_ on the following lines:

Rent Payments received (including Section 8 tenant assistance payments, if any) (1) \$ \_\_\_\_\_

Interest Income (do **not** include interest income from replacement and operating reserves nor interest income on tenant security deposits) (2) \$ \_\_\_\_\_

Additional Income Related to Project Operations (for example, vending machine income, tenant forfeited deposits, laundry income not paid to the residents' association) (3) \$ \_\_\_\_\_

**Total Annual Project Revenue (Add lines 1, 2, and 3)** (4) \$ \_\_\_\_\_

**Operating Expenses<sup>1</sup>**

Please report Operating Expenses incurred in relation to the operations of the Project for the year ending \_\_\_\_\_, on the following lines:

Operating and Maintenance Expenses (5) \$ \_\_\_\_\_

Utilities (6) \$ \_\_\_\_\_

Property management Expenses and On-Site Staff Payroll (7) \$ \_\_\_\_\_

Administrative Expenses Incurred by Project (8) \$ \_\_\_\_\_

Property/Possessory Interest Taxes (9) \$ \_\_\_\_\_

Insurance (10) \$ \_\_\_\_\_

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

Other Expenses Related to Operations of the Project (11) \$ \_\_\_\_\_  
 Please list these expenses: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Total Annual Operating Expenses** (12) \$ \_\_\_\_\_  
 (Add lines 5, 6, 7, 8, 9, 10, and 11)

**Net Operating Income (Subtract Line 12 from Line 4)** (13) \$ \_\_\_\_\_

<sup>1</sup> Do not include expense unrelated to the Project's operations, such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, or capital expenditures paid from withdrawals from the Capital Replacement Reserve.

**Additional Cash Flow Payments**

Obligated Debt Service Payments (as established under the Agreement for the Senior Note and the Second Note) (14) \$ \_\_\_\_\_

Scheduled Deposits to Capital and Operating Reserves (as approved by City) (15) \$ \_\_\_\_\_

Additional Payment Obligations (such as Partnership Related Fees, if any (to the extent allowable under the Agreement), Deferred Developer Fee, all as approved by the City) (16) \$ \_\_\_\_\_

**Total Additional Cash Flow Payments (Add lines 14, 15, and 16)** (17) \$ \_\_\_\_\_

**Residual Receipts for Year Ending \_\_\_\_\_** (18) \$ \_\_\_\_\_  
 (Subtract Line 17 from Line 13)

**Percentage of Residual Receipts to be** (19) \_\_\_\_\_ %  
**Paid to City (under the Capital Recovery Note, 50% of Residual Receipts; Participant also to submit evidence that the remaining 50% of Residual Receipts to be available ultimately to Participant has not been paid prior to payment of all Residual Receipts payments due to City under the Agreement)**

**Amount Payable to City (Multiply Line 18 by Line 19)** (20) \$ \_\_\_\_\_

The amount payable to City listed on Line 20 is subject to payment according to the terms of the Agreement, including without limitation the Capital Recovery Note. If Line 20 is \$0.00 or negative, while you are required to make all payments required under the Senior Note and the Second Note as scheduled, you would not be required to make payment to the City for that year under the Capital Recovery Note. If Line 20 is a positive number, remit check payable to the City of Moreno Valley and attach to this report.

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**Computation of Residual Receipts  
for the Year Ending \_\_\_\_\_**

**The following certification should be executed by the Executive Director or Chief Financial Officer of the Borrower, or the Managing General Partner of the Borrower.**

I certify that the information provided in this form is true, accurate, and correct in all respects.

\_\_\_\_\_

\_\_\_\_\_

Date

By: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_  
(Title)

Attachment: Affordable Housing Agreement, HOME, 22899 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**AFFORDABLE HOUSING AGREEMENT**

**by and between the**

**CITY OF MORENO VALLEY**

**and**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a  
California nonprofit public benefit corporation**



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## AFFORDABLE HOUSING AGREEMENT

**THIS AFFORDABLE HOUSING AGREEMENT** (the “Agreement” or the “AHA”), dated, for identification purposes only, as of September 22, 2015, is entered into by and between the **CITY OF MORENO VALLEY**, a municipal corporation (the “City”), and **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation (the “Participant”).

### R E C I T A L S

**A.** City is the recipient of moneys from the federal government pursuant to the HOME Investment Partnerships Program (“HOME” or “HOME Program”) from the United States Department of Housing and Urban Development (“HUD”).

**B.** City has determined to make certain moneys allocated to it under the HOME Program (“HOME Moneys”) available to Participant pursuant to this Agreement, including the HOME Regulations and all provisions hereof.

**C.** Participant has entered into an agreement with a private party (“Prior Owner”) for the acquisition of of one four (4)-unit apartment building located at 22889 Allies Place in the City of Moreno Valley (the “Site”), as more particularly described in the Map (Attachment No. 1) and the Legal Description of the Site (Attachment No. 2.).

**D.** Under this Agreement, City will acquire the Site provided that Participant executes and delivers to City those promissory notes, deeds of trusts, covenants and regulatory agreements as more particularly set forth herein. Participant shall thereupon acquire or reacquire an interest in the Site and shall thereupon renovate and rehabilitate the existing four (4) dwelling units on the Site, whereupon the Participant shall rent each of such four (4) dwelling units to “Very Low Income Households” or “Low Income Households” at “Affordable Rent” as those terms are defined below all as more particularly provided herein. Such development is intended to implement the City’s affordable housing goals.

**E.** Participant is experienced in the construction, development, renovation, rehabilitation, operation and management of high quality housing which is affordable to persons and families of Low to Moderate Income, including Very Low Income Households and Low Income Households in Southern California.

**F.** All of the units at the Site shall be rented at “Affordable Rent” throughout the “Required Covenant Period” (as defined below). All of the undertakings of the Participant to rent the four (4) Units at the Site at Affordable Rent for Very Low Income Households and Low Income Households are material to this Agreement and but for those undertakings by the Participant and the City would not have entered into this Agreement.

**G.** Under this Agreement, the Participant shall execute and deliver to City three (3) promissory notes. The Participant’s obligation to pay shall be evidenced by the “Senior Note,” the “Equity Share Note” and the “Capital Recovery Note” as defined below. In view of the large commitment of revenues of the City (consisting of revenues under the HOME Program) under this Agreement, and to promote the continued availability of the dwelling units on the Site as rental units

which shall remain available at “Affordable Rent” throughout the “Required Covenant Period” (as those capitalized terms are defined below), the Agreement provides for the City to receive funds in the form of recovery of its capital and as equity sharing, as more particularly provided herein.

**H.** This Agreement is in the vital and best interest of the City of Moreno Valley, California, and the health, safety and welfare of its residents.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

**1.1 Defined Terms.** As used in this Agreement (and in all other Development Documents, unless otherwise defined), the following capitalized terms shall have the following meanings:

“**Affordable Rent**” means an amount equal to the maximum amount of out of pocket housing cost to be charged monthly by Participant and paid by each of the eligible Very Low and Low Income Households for each of the Housing Units at the Project as determined and calculated pursuant to the affordable rent and the rent limitations as determined and published from time to time by TCAC or, if lower, rents restricted to those complying with the HOME Requirements; in the event TCAC ceases to function or to determine affordable rents, then such affordable rents shall be determined by the City Manager, acting on behalf of the City, in a manner substantially consistent with the method under which affordable rents were determined by TCAC. For purposes of Affordable Rent, the monthly housing payment means the total of monthly payments by each tenant household (inclusive of any and all payments attributable to Section 8 housing assistance, other rental subsidies, or other public subsidies, if any) of a Housing Unit for use and occupancy of a Housing Unit and facilities associated therewith, including a reasonable allowance for utilities for an adequate level of service.

“**Area**” means the Riverside-San Bernardino Metropolitan Statistical Area, as periodically defined by HUD.

“**Audited Financial Statement**” means an audited financial statement, including without limitation a profit and loss statement, generated by a third party certified public accountant acceptable to the City in its reasonable discretion, showing, for the previous Year, on a monthly basis and in an easily readable format, Gross Revenues, Operating Expenses, Debt Service, Operating Reserve, Capital Replacement Reserve and Residual Receipts. Depreciation and non-cash items shall not be included.

“**Base Participant Policy**” is defined in Section 2.4 hereof.

“**Building Permit**” means the building permit(s) issued by the City and required for the Improvements.

“**CC&Rs**” means Attachment No. 9 to this Agreement.

“**Calculation of Affordable Rents**” means Attachment No. 5 to this Agreement.

“**Capital Recovery Deed of Trust**” means Attachment No. 16 to this Agreement.

“**Capital Recovery Note**” means Attachment No. 15 to this Agreement.

“**Capital Replacement Reserve**” means a reserve fund to be established by the Participant as a capital reserve in the amount of One Thousand Dollars (\$1,000.00) per Year (for the first Year), which shall remain fixed for the first five Years and then shall increase by fifty dollars (\$50.00) per unit annually, to a maximum of Five Hundred Dollars (\$500.00) per unit annually. The Capital Replacement Reserve is more fully described in Section 3.3 of this Agreement.

“**Certificate of Continuing Program Compliance**” means the Certificate to be filed by the Participant with the City, which Certificate shall be substantially in the form attached hereto as Attachment No. 4.

“**Chargeable Fees**” means each of the following, within the respective parameters therefor set forth in this Agreement: (i) the Capital Replacement Reserve; and (ii) the Operating Reserve.

“**City**” means the City of Moreno Valley, California, a California municipal corporation.

“**City Deed**” means Attachment No. 18 to this Agreement.

“**City Disbursement Amount**” means the sum of Six Hundred Twenty Nine Thousand Eight Hundred Sixty Five Dollars (\$629,865.00), all of which will be funded using HOME Moneys. Two hundred sixty three thousand (\$263,000) will be used for the acquisition of the site and the remaining funds will be used for other activities, including rehabilitation. The manner in which the City Disbursement Amount is allocated among the loans to be evidenced by the Senior Note, the Equity Share Note and the Capital Recovery Note is subject to modification upon mutual agreement of Participant and City; provided that in no event shall the aggregate amount disbursed as the City Disbursement Amount exceed the sum of Six Hundred Twenty Nine Thousand Eight Hundred Sixty Five Dollars.

“**City Escrow**” is described in Section 2.2 hereof.

“**City Manager**” means the City Manager of the City or his designee.

“**City’s Title Policies**” is defined in Section 2.4 hereof.

“**Closing**” means the recording of the Recordable Documents.

“**Closing Deadline**” means February 26, 2016, or such later date as may be mutually agreed to in writing by the City and the Participant.

“**Condition of Title**” is defined in Section 2.3 hereof.

“**Conditions Precedent to Closing**” is set forth in Section 3.1 hereof.

“**Conditions Precedent to Disbursement**” are set forth in Section 3.2 hereof.

“**Construction**” means construction, reconstruction or renovation.

“**County**” means the County of Riverside, California.

“**Date of Agreement**” means September 22, 2015.

“**Debt Service**” means required debt service payments under the Senior Note and the Second Note, including the funding obligations in respect of all reserves or escrows required thereunder.

“**Default**” is defined in Section 7.1 hereof.

“**Development**” means the new apartment complex and associated improvements as required by this Agreement to be: (i) rehabilitated or reconstructed by the Participant upon the Site, with related improvements, all as more particularly described in the Scope of Work: Budget, and (ii) operated in conformity with the CC&Rs.

“**Development Documents**” means, collectively, this Agreement, the CC&Rs, all other Attachments to this Agreement, and any other agreement, document, or instrument that the City requires in connection with the execution of this Agreement or from time to time to effectuate the purposes of this Agreement.

“**Equity Share Deed of Trust**” means Attachment No. 12 to this Agreement.

“**Equity Share Note**” means Attachment No. 11 to this Agreement.

“**Escrow Holder**” means the holder of the Escrow for the conveyance of the Site by the City to the Participant and the recordation of the CC&Rs, which shall be Ticor Title Company of California or another escrow holder mutually acceptable to the City and the Participant.

“**Event of Default**” has the meaning set forth in Section 7.1 hereof.

“**Form of Residual Receipts Report**” means Attachment No. 19 to this Agreement.

“**General Contractor**” means the general contractor to be hired by Participant to engage and supervise the subcontractors in the performance and completion of the construction of the Development and all other on-site and off-site improvements required to be constructed in connection with the Development, all in accordance with the Scope of Work: Budget and any revised Scope of Work: Budget. The General Contractor shall be reasonably acceptable to and approved by the City Manager, in his reasonable discretion; provided, the Participant is hereby pre-approved to act as the General Contractor for the development of the Development. The parties acknowledge that the General Contractor will not be performing actual construction work for any portion of the Development, but instead shall hire Subcontractors (after competitive bidding) who shall be reasonably approved by the City Manager.

“**Governmental Regulations**” means all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, *et seq.*; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), Section 3, 42 U.S.C. Section 9601, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.*; the Safe



Drinking Water Act, as amended, 42 U.S.C. Section 300f *et seq.*; all comparable state and local laws, laws of other jurisdictions or orders and regulations; and all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Participant or the Site.

“**Gross Revenues**” means the total rental income and all other revenues or income received by the Participant or its successors or assigns in connection with the Development, including without limitation Housing Rent, laundry charges, payments in connection with Section 8 certificates (including any payments under such certificates that are in excess of the restricted rents provided for hereunder), cable income, and interest earnings, but, except for any interest earned thereon, does not include (i) refinancing proceeds (provided the refinancing is permitted by and is accomplished in accordance with this Agreement, including without limitation the making of disbursements to the City provided for under the Equity Share Note in connection with refinancings) or (ii) insurance proceeds which are used to repair or reconstruct the Development or condemnation proceeds).

“**Hazardous Material**” or “**Hazardous Materials**” means and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls, (ix) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903); (xi) Methyl tert Butyl Ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, *et seq.*, specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities below attainment levels identified in one or more of the enactments identified above as Governmental Requirements, including those product and amounts as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a



significant population living within the Development, including without limitation alcohol, aspirin, tobacco and saccharine.

“**Hazardous Materials Contamination**” means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in, or under the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Agreement) emanating from the Site.

“**HOME Regulations**” means those regulations set forth at 24 C.F.R., Part 92, as such regulations may be revised from time to time. A copy of the HOME Regulations will be kept on file with the City as a public record. The HOME Regulations shall, for purposes of this Agreement (including without limitation the attachments hereto) be deemed to include Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, as amended.

“**Housing Rent**” means the total of monthly payments by the tenants of a Unit for (a) use and occupancy for the Unit and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Participant which are required of all tenants of the Units, other than security deposits, (c) a reasonable allowance for utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity and gas, as determined by regulation of Housing Authority of the County of Riverside pursuant to 24 C.F.R. Section 5.600 *et seq.* and (d) possessory interest, taxes or other fees or charges assessed for the use of the Units and facilities associated therewith by a public or private entity other than the Participant.

“**HOME Requirements**” means limitations on household income and/or household size as established by the HOME Regulations.

“**HUD**” means the United States Department of Housing and Urban Development.

“**Improvements**” or “**Project**” means all of the improvements described in the Scope of Work: Budget.

“**Income Verification**” means Attachment No. 10 to this Agreement.

“**Legal Description of the Site**” means Attachment No. 2 to this Agreement.

“**Lender’s Title Policy**” is defined in Section 2.4 hereof.

“**Low Income Households**” or “**Lower Income Households**” means households earning not greater than eighty percent (80%) of Median Income for the Area pursuant to Health and Safety Code Section 50079.5.

“**Median Income**” means Median Income for the Area (namely, Riverside County), as set forth by regulation of the California Department of Housing and Community Development pursuant to Health and Safety Code Sections 50079.5 and 50105.

“**Notice**” means a notice in the form prescribed by Section 8.2 of this Agreement.

**“Operating Expenses”** means actual, reasonable and customary costs, fees and expenses directly incurred and for which payment has been made and which are attributable to the operation, maintenance, and management of the Development, excluding the Capital Replacement Reserve and consisting of only the following (and such additional items, if any, as to which the prior written approval of the City Manager is first obtained. Such approval shall be granted, granted subject to conditions, or refused at the sole and absolute discretion of the City Manager): painting, cleaning, repairs and alterations; landscaping; utilities; rubbish removal; sewer charges; costs incurred to third parties in connection with generating laundry charges (but in no event to exceed the laundry charges); real and personal property taxes and assessments; insurance premiums; security; advertising, promotion and publicity; office, janitorial, cleaning and building supplies; the actual and customary salary payable to an on-site manager which directly and exclusively benefits residents of the Development; the actual and customary salary of one assistant manager, one on-site maintenance manager and such other personnel, if any, as incurred for the hiring of unrelated third parties for on-site management, which directly and exclusively benefit residents of the Development, subject to the prior written approval of the City Manager at his sole and absolute discretion; a management fee (“Management Fee”) of not to exceed Six Hundred Twenty-Five Dollars (\$625.00) per Year (as adjusted annually by the City Manager as of January 1st of each year based upon the consumer price index applicable to Riverside County) per Qualifying Rental (per Year); purchase, repairs, servicing and installation of appliances, equipment, fixtures and furnishings; reasonable and customary fees and expenses of accountants, attorneys, consultants and other professionals as incurred commencing after the completion of the Improvements (as evidenced by the issuance by City of a certificate of occupancy for the corresponding building developed as part of the Improvements) in connection with the operation of the Development; tenant improvements that are not included in the costs of the Improvements, and payments made by the Participant to satisfy indemnity obligations and other payments by the Participant pursuant to this AHA other than to the Participant, the Participant’s partners or other related persons; provided, however, that payments to parties related to Participant for Operating Expenses must not exceed market rates. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation. The Operating Expenses shall be reported in the Audited Financial Statement and shall be broken out in line item detail.

**“Original Price”** means the sum of One Hundred Eighty Nine Thousand Fifty Dollars (\$263,000.00) (exclusive of closing costs).

**“Participant”** means Riverside Housing Development Corporation, a California nonprofit public benefit corporation.

**“Participant Pro Forma”** means Attachment No. 17 to this Agreement.

**“Principals”** means Bruce Kulpa.

**“Prior Owner”** means \_\_\_\_\_ (the entity from which Participant acquired the Site for the Original Price).

**“Purchase Price”** is defined in the Equity Share Note.

**“Qualifying Rentals”** means Units operated in strict conformity with all provisions of this Agreement (including the Attachments hereto).

**“Recordable Documents”** means the following: (i) the City Deed; (ii) the CC&Rs; (iii) the Resale Restriction Agreement; (iv) the Senior Deed of Trust; (v) the Capital Recovery Deed of Trust; and (vi) such other instruments, if any, as shall be approved by the City Manager (upon consultation with City’s legal counsel) as necessary or convenient to effectuate and implement the initial financing of the Improvements (and the permanent financing thereof).

**“Redevelopment Plan”** is defined in Section 1.5 hereof.

**“Related Entity”** means a Principal or an entity in which any interest is held by the Participant or one or more of the Principals.

**“Reporting Amount(s)”** means the sum of Two Hundred Fifty Hundred Dollars (\$250.00) per unit per year for each dwelling unit as to which the Participant fails to deliver to City, during any Year, a full and adequate report that conforms to Section 33418 of the California Health and Safety Code.

**“Required Affordable Units”** means all four (4) of the dwelling units on the Site.

**“Required Covenant Period”** means a period of fifty-six (56) years, as more particularly set forth in the CC&Rs.

**“Resale Restriction Agreement”** means Attachment No. 13 to this Agreement.

**“Residual Receipts”** for a particular Year means Gross Revenues for the corresponding Year less (i) Debt Service payments made during such Year, and (ii) the sum of Operating Expenses and, to the extent funded and within the parameters as set forth in this Agreement therefor, Chargeable Fees made during the corresponding Year. All calculations of Residual Receipts shall be made annually, on or before March 15 for the preceding Year, on a cash (and not accrual) basis and the components thereof shall be subject to verification and approval, on an annual basis, based upon conformity with the terms of the this Agreement, by the City. The calculation of Residual Receipts is to facilitate the tracking by City of performance by the Participant under this Agreement; payments under the promissory notes hereunder shall be due and payable without regard to the availability of Residual Receipts.

**“Rules and Regulations”** means each of: (i) Health and Safety Code Sections 50052.5, 50053 and 50105; (ii) the Davis-Bacon Act (40 U.S.C. 3141 et seq.); (iii) Community Development Block Grant (CDBG) program as authorized under the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq. (“HCD Act”) and the regulations promulgated thereunder at 24 C.F.R. 570; (iv) The Housing and Economic Recovery Act of 2008 (Public Law 110-289) (“HERA”); (v) The American Reinvestment and Recovery Act of 2009 (Public Law 111-005) (the “Recovery Act”); (vi) Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 [Docket No. FR 5321-N-01] (the “NSP2 NOFA”); (vii) the Community Development Block Grant (CDBG) program as authorized under the Public Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq. (“HCD Act”) as amplified by regulations set forth at 24 C.F.R. 570; (viii) the Housing and Economic Recovery Act of 2008 (Public Law 110-289) (“HERA”); (ix) the American Reinvestment and Recovery Act of 2009 (Public Law 111-005) (the “Recovery Act”); (x) the Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 [Docket No. FR 5321-N-01] (the “NSP2 NOFA”); (xi) the National Environmental Policy Act of

1969 and related federal environmental authorities and regulations at 24 C.F.R. Part 58; (xii) City's Final Neighborhood Stabilization Program as amended by Substantial Amendment to the City of Moreno Valley's 2008-2009 Annual Action Plan, as adopted November 25, 2008; (xiii) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010), including regulations cited at 75 FR 64322 ("NSP3"); (xiv) the Notice of Funding Availability (NOFA) for NSP3 (the "NSP3 NOFA"); (xv) the Flood Disaster Protection Act of 1973 (P.L. 93-2234) for compliance in regard to the sale, lease, or other transfer of land acquired, cleared or improved under the terms of this Agreement; (xvi) the Clean Air Act, as amended (42 U.S.C. 1857, et seq.); (xvii) the Water Pollution Control Act, as amended, 33 U.S.C. 1251, et. seq., as amended 1318 relating to the inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; (xviii) the Environmental Protection Agency Regulations pursuant to 40 C.F.R., Part 50, as amended; (xix) Labor Standards (29 CFR Parts 3.5 and 5a) pertaining to contracts and applicable requirements of the regulations of the Division of Labor; (xx) the Drug Free Workplace Act of 1988; (xxi) Public Law 101-144, Section 519 (the 1990 HUD Appropriation Act); (xxii) the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470); (xxiii) federal regulations requiring that minority and women's businesses be afforded opportunities to participate in the performance of this Agreement; (xxiv) as to conflicts of interest: (a) Participant agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following: (1) Participant shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds; (2) no employee, officer or agent of Participant shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved; (3) no covered persons who exercise or have exercised any functions or responsibilities with respect to NSP-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the NSP-assisted activity, or with respect to the proceeds from the NSP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of City, Participant, or any designated public agency; (xxv) Participant shall comply with federal regulations concerning lobbying; (xxvi) 42 U.S.C. Section 5309 (nondiscrimination); and (xxvii) to the extent applicable, including a Section 3 Clause in each construction contract.

**"Schedule of Performance"** means Attachment No. 3 to this Agreement. The Schedule of Performance sets forth the dates by which City and Participant are to perform certain obligations under this Agreement.

**"Scope of Work: Budget"** means Attachment No. 7 to this Agreement.

**"Section 3"** means Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. Section 1701u, as amended, and the implementing regulations.

**"Section 3 Clause"** means and refers to the clause required to be included in contracts for work subject to Section 3. City may, at its option, prepare a Section 3 "checklist" and other forms related to Section 3 compliance; and as may be provided by City to Participant, and its contractor(s) or subcontractor(s), if any, and as applicable, such forms shall be utilized in all contracts and

subcontracts to which Section 3 applies. For purposes of this Section 3 Clause and compliance thereto, whenever the word “contractor” is used it shall mean and include, as applicable, Participant, and its contractor and subcontractor(s), if any. The particular text to be utilized in any and all contracts of any contractor doing work covered by Section 3 shall be in substantially the form of the following, as reasonably determined by City or as directed by HUD or its representative, and shall be executed by the applicable contractor under penalty of perjury:

“(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons [inclusive of Lower Income Households served by the Project], particularly persons who are recipients of HUD assistance for housing.

(ii) The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of notices in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(v) The contractor will certify that any vacant employment positions, including training positions, that are filled (a) after the contractor is selected but before the contract is executed, and (b) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR part 135.

(vi) Noncompliance with HUD’s regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(vii) With respect to work performed in connection with Section 3 covered Indian Housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance



Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible, (a) preference and opportunities for training and employment shall be given to Indians, and (b) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).”

After the foregoing Section 3 Clause, add signature block of Contractor, Subcontractor, or other contractors and subcontractors, as applicable, and add the following text immediately above the signature block: “The contractor/provider by this his/her signature affixed hereto declares under penalty of perjury that contractor has read the requirements of this Section 3 Clause and accepts all its requirements contained therein for all of his/her operations related to this contract.”

To the extent applicable, Participant shall comply and/or cause compliance with Section 3 Clause requirements for the Project. For example, when and if Participant or its contractor(s) hire(s) full time employees, rather than volunteer labor or materials Section 3 is applicable and all disclosure and reporting requirements apply.

“**Senior Loan**” means a loan by the City in the original principal amount of One Hundred Seventy-Seven Thousand Dollars (\$177,000.00) as evidenced by the Senior Note.

“**Senior Deed of Trust**” means a deed of trust in the form of Attachment No. 14 to this Agreement.

“**Senior Note**” means a promissory note in the form of Attachment No. 6 to this Agreement.

“**Site**” means that real property depicted on the Site Map and described with greater particularity by the Legal Description of the Site.

“**Site Disposition**” means the conveyance of the Site to the Participant by the City Deed.

“**Site Map**” means Attachment No. 1 to this Agreement.

“**Stabilized Occupancy**” means occupancy of all four (4) of the Units for three (3) consecutive months.

“**Subcontractor**” and “**Subcontractors**” means, individually and collectively, one or more subcontractors hired by Participant’s General Contractor for the Development to perform and complete, or to engage and supervise others to perform and complete, the construction of the Development and all other on-site and off-site improvements required to be constructed in connection with the Development, all of which shall be in accordance with the Scope of Work: Budget. Each of the Subcontractors shall be selected after competitive bidding, and City shall have every reasonable right and opportunity to observe and review all material stages of such competitive bidding process, including a right to review the invitation to bidders, each bid package, each responsive bid form, each submitted bid package and the right to be present when each bid is opened by Participant and/or the General Contractor. Participant shall submit to City information regarding the entity serving as the Subcontractor for any portion of the construction of the Development and all other on-site and off-site improvements required to be constructed in connection therewith in

accordance with the Scope of Work: Budget, including compliance with plans approved by City and the obtaining by Participant of all required licenses, certifications, insurance, etc., as reasonably requested by the City Manager.

“**TCAC**” means the California Tax Credit Allocation Committee, the allocating agency for Tax Credits in California.

“**Tax Credits**” means federal 9% Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, et seq.

“**Title Company**” shall be Ticor Title Company of California or another title insurer mutually acceptable to the City and the Participant.

“**Transfer**” means the transfer of the Site or any interest thereon by Participant, but excluding therefrom the rental of individual units to Low Income Households at Affordable Rent in strict conformity with this Agreement.

“**Unit**” means each of the four (4) dwelling units required to be renovated by the Participant under this Agreement.

“**Very Low Income Households**” means households earning not greater than fifty percent (50%) of Median Income for the Area pursuant to Health and Safety Code Section 50105.

“**Year**” means the period commencing as of the Date of Agreement and ending as of December 31 of that calendar year, then each succeeding calendar year thereafter during the Required Covenant Period.

**1.2 Singular and Plural Terms.** Any defined term used in the plural in this Agreement or any Development Document shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

**1.3 References and Other Terms.** Any reference to this Agreement or any Development Document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation.”

**1.4 Exhibits Incorporated.** All attachments and exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

**1.5 The Redevelopment Plan.** The Redevelopment Plan for the Moreno Valley Redevelopment Project (the “Redevelopment Project”) was adopted on December 29, 1987 by Ordinance No. 87-154 (the “Redevelopment Plan”). The project area of the Redevelopment Project is referred to herein as the “Project Area”. The Participant has reviewed the Redevelopment Plan and agrees to perform under this Agreement in conformity with the Agreement and, to the extent the

Redevelopment Plan is applicable following the dissolution of the Community Redevelopment Agency of the City of Moreno Valley which occurred on February 1, 2012, the Redevelopment Plan.

## 1.6 Representations and Warranties.

**1.6.1 Participant Representations.** Participant represents and warrants to each of the City as follows:

(a) **Authority.** Participant is a duly organized limited non-profit corporation organized within and in good standing under the laws of the State of California. Participant has full right, power and lawful authority to lease and accept title to and possession of the Site and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Participant has been fully authorized by all requisite actions on the part of the Participant. The parties who have executed this Agreement on behalf of Participant are authorized to bind Participant by their signatures hereto.

(b) **Litigation.** To the best of Participant's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Participant, at law or in equity before any court or governmental agency, domestic or foreign.

(c) **No Conflict.** Participant's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Participant is a party or by which it is bound.

(d) **No Participant Bankruptcy.** Participant is not the subject of a bankruptcy proceeding.

(e) **Participant Experience; Sophisticated Party.** The Principals of Participant are sophisticated parties, with substantial experience in the acquisition, rehabilitation, development, financing, obtaining financing for, marketing, and operation of affordable housing projects, including rental projects, and with the negotiation, review, and preparation of agreements and other documents in connection with such activities. The Participant is familiar with and has reviewed all laws and regulations pertaining to the development and operation of the Development (including without limitation the Rules and Regulations), and has obtained advice from any advisers of its own choosing in connection with this Agreement.

(f) **Participant Status as CHODO.** Participant is a community housing development organization (or "CHODO") within the meaning of § 92.2 of the HOME Regulations.

(g) **Due Authorization and Execution; Studies Completed.** Participant has duly authorized the execution of this Agreement, the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Equity Share Note and the Equity Share Deed of Trust. Participant is ready, willing and able to execute the CC&Rs, the Resale Restriction Agreement, the Equity Share Note, the Equity Share Deed of Trust, the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust and all documents necessary to effectuate the Development. Concurrently with the execution of this Agreement by City or within three (3) calendar days thereafter, Participant shall execute and deposit with the City or the Escrow Holder (to be held pending satisfaction of the Conditions Precedent to Disbursement as set forth in Section 3.1 hereunder) the CC&Rs, the Resale Restriction Agreement,



the Senior Note, the Equity Share Note, the Capital Recovery Note, the Equity Share Deed of Trust, the Senior Deed of Trust, the Capital Recovery Deed of Trust and all documents necessary to effectuate the renovation of the Site and the operation of the affordable rental units hereunder in conformity with this Agreement.

**1.6.2 City Representations.** City represents and warrants to Participant as follows:

(a) **Authority.** City is a municipal corporation, which has been authorized to transact business pursuant to action of the City. City has full right, power and lawful authority to execute, perform under and deliver this Agreement, and the execution of this Agreement by City has been fully authorized by all requisite actions on the part of City. The parties who have executed this Agreement on behalf of City are authorized to bind City by their signatures hereto.

(b) **No Conflict.** To the best of City's knowledge, City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(c) **No City Bankruptcy.** City is not the subject of a bankruptcy proceeding.

## 2. ACQUISITION; LOANS; SITE

**2.1 Acquisition of Site.** The Participant originally negotiated with the Prior Owner for the acquisition of the Site and subsequently acquired the Site. The Participant has proposed that the City either acquire the Site from Participant and then convey the Site to the Participant in accordance with the terms of this Agreement subject to recordation of instruments identified in the remainder of this Section 2.1 or cause such instruments to be recorded, with the concurrence of Participant, with ownership being retained by Participant. If the City conveys the Site to Participant, such conveyance is to be concurrent with the recording of the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust and the Capital Recovery Third Deed of Trust. The recordation of those instruments is to be accomplished as set forth in Sections 2.1 to 2.5 hereof (with such instruments to be recorded without regard to whether City conveys the Site to Participant or Participant retains ownership of the Site).

**2.1.1 Site Due Diligence.** Based upon its review as undertaken prior to the Date of Agreement, the Participant believes that the Site is suitable for the development and use provided under this Agreement.

**2.1.2 City Disbursements; Participant Payments.** In connection with this Agreement, particularly in connection with the acquisition of the Site as accomplished by City and funding of the Improvements (subject to the satisfaction of the Conditions Precedent to Disbursement), it is contemplated that the City will disburse the remainder of the City Disbursement Amount (in addition to that portion of the City Disbursement Amount used for the acquisition of the Site and related activities, namely \$263,000.00). Excepting for the portion of the City Disbursement Amount already disbursed in connection with the acquisition of the Site by the City and associated activities, the City Disbursement Amount is to be disbursed as construction drawdowns, as more particularly set forth in Section 4.4.1 of this Agreement.

Thereafter, following the Closing, the Participant shall make all payments to the City as required under the Senior Note, the Equity Share Note and the Capital Recovery Note.

**2.2 Escrow.** The parties shall open an escrow (the “City Escrow”) with the Escrow Holder, by the time established therefor in the Schedule of Performance for the Closing, and the recordation and delivery of documents described in Section 2.1. The City and the Participant agree to execute such escrow instructions as may be reasonably required to implement this Section 2.2.

Payment of the purchase price for the Site by the Participant to the City is to be accomplished outside escrow and is a matter with which Escrow Holder need not be concerned.

**2.2.1 Costs of Escrow.** The Participant shall pay for all costs and expenses in connection with the conveyance of the Site by City to Participant (excepting only for that portion of escrow fees and title insurance premiums to be borne by the City as set forth Section 2.4 hereof).

**2.2.2 Escrow Instructions.** This Agreement constitutes the joint escrow instructions of the Participant, the City, and the Escrow Holder to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close this Escrow in the shortest time reasonably practicable. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account. The City designates the City Manager to act on its behalf in connection with the City Escrow.

The parties agree to execute supplemental escrow instructions consistent with the terms of this Agreement and such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. Escrow Holder is instructed to release City’s escrow closing and The Participant’s escrow closing statements to the respective parties.

**2.2.3 Authority of Escrow Holder.** Escrow Holder is authorized to, and shall:

- (a) Pay and charge the City for the premium for the Base Participant Policy and the premium for the City’s Title Policies as set forth in Section 2.4.
- (b) Pay and charge the Participant and City for their respective shares of any escrow fees, charges, and costs payable under Section 2.4 of this Agreement.
- (c) Disburse funds, record and deliver the Recordable Documents in the order prescribed in Section 2.2.6 hereof.
- (d) Do such other actions as necessary to fulfill its obligations under this Agreement.
- (e) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

**2.2.4 Closing.** The recording of the Recordable Documents hereunder (the “Closing”) is to be accomplished within thirty (30) days of the parties’ satisfaction of all of Conditions Precedent to Closing, but in no event later than the last day established therefor in the Schedule of Performance. As part of the Closing, each of the Senior Note, the Capital Recovery Note and the Equity Share Note shall be executed and held by Escrow Holder for delivery to City and all of the City Deed, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Second Deed of Trust the Capital Recovery Deed of Trust, and the Equity Share Deed of Trust shall have been recorded by the Riverside County Recorder. The “Closing Date” means the day on which the Closing occurs.

**2.2.5 Termination.** If Escrow is not in condition to close by the time established therefor in the Schedule of Performance, then the party which has fully performed under this Agreement may, in writing, demand the return of money or property and terminate this Agreement. If a party makes a written demand for return of documents or properties, this Agreement shall not terminate until five (5) days after Escrow Holder shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Holder is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of this Agreement shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Holder shall proceed with the Closing as soon as possible. At the election of the City, default by the Participant under this Agreement shall constitute a default under this Agreement.

**2.2.6 Closing Procedure.** Escrow Holder shall close Escrow for the Transfer as follows:

Record the following documents in this order: (i) the City Deed (unless waived by City); (ii) the CC&Rs; (iii) the Resale Restriction Agreement; (iv) the Senior Deed of Trust; (v) the Equity Share Deed of Trust; (vi) the Capital Recovery Deed of Trust; (vii) such other instruments, if any, as shall be approved by the City Manager (upon consultation with City’s legal counsel) as necessary or convenient to effectuate and implement the financing of the acquisition of the Site and the renovation of the Improvements, with instructions for the Recorder of Riverside County, California to deliver: (i) to the City, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Capital Recovery Deed of Trust and the Equity Share Deed of Trust; (ii) deliver a certified copy of each of the foregoing to the Participant and the original City Deed to the Participant (unless recording of the City Deed is waived by City on the basis that Participant holds title to the Site). The Escrow Holder shall also deliver to City each of the Senior Note, the Capital Recovery Note and the Equity Share Note, a certified copy of the City Deed and each of the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust and the Capital Recovery Deed of Trust (and, until the originals of such recorded instruments are available, a conformed copy of each) and shall:

- (a) Instruct the Title Company to deliver to City the City’s Title Policies and a copy of the owner’s title insurance policy demonstrating that the Participant has acquired fee title to the Site;
- (b) Instruct the Title Company to deliver to Participant the Base Participant Policy;

- (c) Deliver documents as set forth in this Section 2.2.6;
- (d) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;
- (e) Deliver the FIRPTA Certificate, if any;
- (f) Disburse the moneys, if any, due to the respective parties hereto; and
- (g) Forward to both the Participant and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

**2.3 Review of Title.** The Participant has reviewed the condition of Title. The Participant shall cause the Title Company, within fifteen (15) days of the Date of Agreement, to deliver a copy of a pro forma title insurance policy showing the condition of title as it will appear at closing. The Participant acknowledges that, at closing, title is to be subject to:

- (a) The Redevelopment Plan.
- (b) The lien of any non-delinquent property taxes and assessments.
- (c) The provisions of the City Deed, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust and the Capital Recovery Deed of Trust.
- (d) Any incidental easements or other matters affecting title which do not materially impact the Participant's use of the Site as described in the Scope of Work: Budget.

Each party hereto shall expeditiously review the condition of title and shall confer and consult with one another in the event any exceptions to title are viewed as unacceptable or problematic by either such party. If such matters cannot be resolved to the mutual satisfaction of the Participant and the City, this Agreement may be terminated as provided pursuant to Sections 7.3(b) and 7.4.5 hereof.

**2.4 Title Insurance; Escrow Charges.** Concurrently with the recordation of the City Deed, the Title Company shall commit to issue to the Participant a CLTA owner's title policy based upon the Original Price (namely, \$263,000); a policy confirming to the foregoing constitutes the "Base Participant Policy." The premium for the Base Participant Policy shall be borne by the City. The premium or other costs for other or additional coverage for the benefit of the Participant shall be borne by the Participant. The Participant shall bear one-half of escrow charges and other closing costs.

Concurrently with recordation of the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust, the Title Company shall commit to issue to the City a lender's ALTA title policy for each such deed of trust based upon the original principal amount of such deed of trust secured thereby (the "City's Title Policies") or such other amount(s) as may be mutually agreed by the City and the Title Company. The City shall pay the premium for the City's Title Policies. Closing costs in connection with the deeds of trust having the City as beneficiary shall be borne by the City. One half of escrow charges and other closing costs.

## 2.5 Environmental Condition of the Site.

**2.5.1 Studies and Reports.** Prior to the Closing, Participant may obtain data and make any other or additional surveys, tests, studies, and reports necessary to evaluate the suitability of the Site for the Development, including the investigation of the environmental condition of the Site (collectively, the “Studies”). Any studies undertaken on the Site by Participant shall be done at the sole expense of Participant, and Participant shall make arrangements with the owner of the Site prior to undertaking such work and entering the Site. Any studies shall be undertaken only after Participant has secured the consent of the current owner and any necessary permits therefor from the appropriate governmental agencies. Participant hereby agrees to promptly provide the City with any and all Studies relating to the environmental condition of the Site when these become available to Participant.

**2.5.2 Approval of Environmental Condition of the Site.** Prior to the Closing, Participant shall approve or disapprove the environmental condition of the Site by written notice to the City. In the event that Participant disapproves the environmental condition of the Site, this Agreement shall be terminated as provided in Section 7.3(b) hereof prior to the Closing. In the event Participant disapproves the condition of the Site because it determines that environmental remediation is required to place the Site in a condition suitable for use as required hereunder any party to this Agreement may terminate this Agreement as provided herein prior to the Closing.

**2.5.3 Indemnification.** Participant shall save, protect, pay for, defend (with counsel acceptable to the City), indemnify and hold harmless the City, and its respective elected and appointed officials, officers, employees, attorneys, representatives, volunteers, contractors and agents (collectively, “Indemnitees”) from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants’ fees, investigation and laboratory fees, attorneys’ fees and remedial and response costs and third-party claims or costs) (the foregoing are hereinafter collectively referred to as “Liabilities”) that may now or in the future be incurred or suffered by Indemnitees by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of: (i) the presence, use, release, escape, seepage, leakage, spillage, emission, generation, discharge, storage, or disposal of any Hazardous Materials in, on, under, or about, or the transportation of any such Hazardous Materials to or from, the Site; (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, leakage, spillage, emission, escape, discharge, storage, disposal, or transportation of Hazardous Materials in, on, under, or about, or to or from, the Site; (iii) the physical and environmental condition of the Site, and (iv) any Liabilities relating to any Environmental Laws and other Governmental Requirements relating to Hazardous Materials and/or the environmental and/or physical condition of the Site, whether such conditions arose before or after the Closing. The foregoing indemnification shall continue in full force and effect regardless of whether such condition, liability, loss, damage, cost, penalty, fine, and/or expense shall accrue or be discovered before or after the termination of the Required Covenant Period. This indemnification supplements and in no way limits the indemnification set forth in Section 4.7.

**2.5.4 Duty to Prevent Hazardous Material Contamination.** During the construction, development, operation and management of the Development, Participant shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Site. Such precautions shall include, but not be limited to, compliance with all Environmental Laws and other Governmental Requirements. Participant shall notify the City, and



provide to the City a copy or copies of any notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to all Environmental Laws and other Governmental Requirements, and Participant shall report to the City, as soon as possible after each incident, any unusual or potentially important incidents in the event of a release of any Hazardous Materials into the environment.

**2.5.5 Release of City by Participant.** Participant hereby waives, releases and discharges forever the City and the Indemnitees from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, including attorneys' fees, court and litigation costs and fees of expert witnesses, present and future, arising out of or in any way connected with Participant's possession or use of the Site, improvement of the Site in accordance with this Agreement, the Scope of Development, and the land use entitlements obtained by Participant for the Development, and for the operation of the Development at the Site, of any Hazardous Materials on the Site, or the existence of Hazardous Materials contamination in any state on, under, or about the Site, however they came to be located there.

In connection with the foregoing, Participant acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code that provides as follows:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

As such relates to this Section 2.5.5, Participant hereby waives and relinquishes all rights and benefits that it may have under Section 1542 of the California Civil Code.

Notwithstanding the foregoing, this waiver, discharge, and release shall not be effective in the event the presence or release of Hazardous Materials on the Site occurs as a result of the active willful misconduct of the City or its officers, employees, representatives and agents.

**2.5.6 Environmental Inquiries.** Participant shall notify the City upon receipt, and provide to the City a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Site or the Development: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Environmental Laws and other applicable Governmental Requirements relating to Hazardous Materials and underground tanks, and Participant shall report to the City, as soon as possible after each incident, all material information relating to or arising from such incident, including, but not limited to, the following:

(a) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirements;

(b) All notices of suspension of any permits relating to Hazardous Materials;

(c) All notices of violation from federal, state or local environmental authorities relating to Hazardous Materials;

(d) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;

(e) All orders under the Porter Cologne Act, including corrective action orders, cease and desist orders, and clean up and abatement orders;

(f) Any notices of violation from OSHA or Cal OSHA concerning employees' exposure to Hazardous Materials;

(g) All complaints and other pleadings filed against Participant relating to the storage, use, transportation, handling or disposal of Hazardous Materials on or about the Site; and

(h) Any and all other notices, citations, inquiries, orders, filings or any other reports containing information which would have a materially adverse effect on the Site or the City's liabilities or obligations relating to Hazardous Materials.

In the event of a release of any Hazardous Materials into the environment, Participant shall, as soon as possible after the release, furnish to the City a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the City, but subject to any limitations imposed by law or by court order, Participant shall furnish to the City a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site or portion thereof in Participant's possession and/or shall notify the City of any environmental entitlements or inquiries relating to or affecting the Site within Participant's actual or constructive knowledge if Participant is not in possession of same, including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

### **3. CONDITIONS TO CLOSING; CONDITIONS TO DISBURSEMENT; REPORTING, RESERVES AND PAYMENTS BY PARTICIPANT**

**3.1 Conditions Precedent to Closing.** The City shall not convey the Site to Participant unless and until each and every one of the following conditions precedent (the "Conditions Precedent to Closing") has been fully satisfied, as determined in good faith by the City Manager (each of which condition[s], if it requires action by Participant, shall also be a covenant of Participant):

(a) Participant shall have approved the environmental condition of the Site and the condition of title;

(b) Participant shall have deposited with the Escrow Holder those amounts to be paid by the Participant pursuant to Section 2.4;

(c) **Representations and Warranties.** The representations and warranties of Participant contained in this Agreement shall be correct as of Closing; and

(d) **No Default.** No Event of Default by Participant shall have occurred under this Agreement, no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Participant under this Agreement, and City Manager shall have received a certificate to that effect signed by an officer of Participant.

All conditions set forth in Section 3.1, or to City's obligations hereunder, are for City's benefit only and the City Manager may waive all or any part of such rights (excepting as to subsection (e), above) by written notice to Participant and Escrow Holder. If the City Manager shall, within the applicable periods set forth herein, disapprove of any of the items which are subject to City's approval, or if any of the conditions set forth in this Agreement are not met within the times called for, City may thereafter terminate this Agreement without any further liability on the part of City by giving written notice of termination to the Escrow Holder, with a copy to Participant. Escrow Holder shall thereupon, without further consent from Participant, return to each party the documents and funds deposited by them.

**3.2 City's Conditions to Disbursement.** The City shall not disburse any portion of the City Disbursement Amount (excepting for those moneys, if any, heretofore disbursed by City for the purchase of the Site) or make any other disbursement to the Participant or to escrow for the purchase of the Site, as provided pursuant to this Agreement, unless and until each and every one of the following conditions precedent (the "Conditions Precedent to Disbursement") has been fully satisfied, as determined in good faith by the City Manager (each of which condition[s], if it requires action by Participant, shall also be a covenant of Participant):

(a) **Recording of Certain Documents.** A grant deed for the Site in form acceptable to City, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust have been recorded (or the Escrow Holder has confirmed that such instruments shall be recorded concurrent with the disbursement of such moneys, and that such instruments are ready to record).

(b) **Conditions Precedent to Closing.** The Conditions Precedent to Closing have been and remain satisfied.

(c) **Insurance.** City shall have received evidence, satisfactory to the City Manager, that all of the insurance policies required by Section 4.5, below, are in full force and effect.

(d) **Representations and Warranties.** The representations and warranties of Participant contained in this Agreement shall be correct as of the request for disbursement of funds by the City.

(e) **No Objection by HUD.** HUD shall not have objected to the approval of this Agreement or the disbursement in the manner, time and amounts set forth in this Agreement of moneys made available to the City under the HOME Regulations, and HUD shall have consented to such disbursements to the extent such consent is required under the HOME Regulations.

(f) **No Default.** No Event of Default by Participant shall have occurred under this Agreement, no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Participant under this Agreement, and the City Manager shall have received a certificate to that effect signed by an officer of Participant.



All conditions set forth in Section 3.2, or to City's obligations hereunder, are for City's benefit only and the City Manager may waive all or any part of such rights (excepting as to subsection (e), above) by written notice to Participant and Escrow Holder. If the City Manager shall, within the applicable periods set forth herein, disapprove of any of the items which are subject to City's approval, or if any of the conditions set forth in this Agreement are not met within the times called for, City may thereafter terminate this Agreement without any further liability on the part of City by giving written notice of termination to the Escrow Holder, with a copy to Participant. Escrow Holder shall thereupon, without further consent from Participant, return to each party the documents and funds deposited by them.

**3.3 Maintenance of Reserves.** Participant shall, commencing as of the first month following the first anniversary of the completion of the first Unit (as such completion is evidenced by the issuance of a certificate of occupancy by the City as to the corresponding building), set aside the Capital Replacement Reserve. The Capital Replacement Reserve shall be deposited into a separate interest-bearing trust account. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Improvements' fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Development become necessary, the Capital Replacement Reserve shall be the first source of payment therefor; provided, however, that Participant may first use other funds for payment with the prior consent of City Manager, which approval shall not be unreasonably withheld. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Participant of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site in the manner prescribed in this Section 3.3 and the CC&Rs. Participant, at its expense, shall submit to City on not less than an annual basis an accounting for the Capital Replacement Reserve. Any moneys in the Capital Replacement Reserve which are not expended as of June 1, 2067 shall be applied toward payment on one or more obligations payable by Participant to the City.

Capital repairs to and replacement of the Improvements shall include only those items with a long useful life, including without limitation the following: (a) appliance replacement; (b) hot water heater replacement; (c) plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; (d) air conditioning and heating replacement; (e) asphalt replacement; (f) roofing replacement; (g) landscape tree replacement and irrigation pipe and controls replacement; (h) gas line pipe replacement; (i) lighting fixture replacement; and (j) miscellaneous motors and blowers.

**3.4 Submittal of Annual Reports.** On or before each March 1 commencing March 1, 2017, the Participant shall submit the annual report provided for in Section 5.3.2 hereof and, at the same time, an Audited Financial Statement for the previous Year (or portion thereof), including all funds from whatever source provided to the Participant or any Related Entity in connection with the Development. The Audited Financial Statement shall demonstrate ongoing compliance with this Agreement, including without limitation the Senior Note, the Equity Share Note, and the Capital Recovery Note.

The Participant agrees that: (i) the Participant shall cooperate fully with the City and its designees in providing information necessary or convenient, in the reasonable judgment of the City, to the computation and verification of all payments due by Participant under this Agreement (including without limitation under the Senior Note, the Equity Share Note, the Capital Recovery Note and the CC&Rs), including without limitation a certified financial statement for the Participant each Year until all obligations under this Agreement (including without limitation the Attachments

hereto) have been fully satisfied; if the City has reasonable cause to believe there has been an under-reporting, or otherwise at the City's discretion, the City may conduct an audit. The firm of Keyser Marston Associates, Inc., a certified public account selected by the City, or a firm or economist mutually acceptable to the City and the Participant will be employed to determine the payments due, and the costs of employing such firm shall be borne by the City; provided that if the audit reveals under-reporting of three percent (3%) or more of the amount payable to the City for the corresponding Year, the Participant shall reimburse the City for the cost of the audit. Until the cost of the audit has been paid, such amount shall be deemed to constitute an advance (and thus additional indebtedness) under the Capital Recovery Note.

**3.5 Payments by Participant To City.** The Participant shall make each and every payment as required under each of the Senior Note, the Equity Share Note, and the Capital Recovery Note.

#### **4. SCOPE OF WORK: BUDGET; INSURANCE AND INDEMNITY, FINANCING**

**4.1 Scope of Work: Budget.** The Participant shall develop the Improvements in accordance with the City Disbursement Amount and the Scope of Work: Budget, and the approved plans, drawings and documents for the Improvements. In the event of any inconsistency between the Scope of Work: Budget and the plans for the Improvements which have been approved by the City, the approved Development plans shall control. In the event the Participant seeks disbursement of other City moneys due to encountering unanticipated construction problems in the course of implementing the Improvements, the Participant may submit a request for change order including additional City moneys, which request will include a specific delineation of the conditions encountered and the steps Participant proposes to address and correct such conditions. Participant agrees and acknowledges that there is no assurance that the City will have available to it moneys for such purpose, that only moneys made available to City under the HOME Regulations will be used for such purposes, and that any change orders/additional moneys will be subject to the City's customary change order process.

**4.2 Land Use Approvals.** Before commencement of construction of the Improvements or other works of improvement upon the Site, the Participant shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits, and approvals which may be required for the Improvements by the City or any other governmental agency affected by or having jurisdiction over such construction or work, including without limitation a license agreement between the Participant and the City allowing entry onto the Site which indemnifies City from any claims made in connection with the activities of the Participant. The Participant shall, without limitation, apply for and secure, and pay all costs, charges and fees associated therewith, all permits and fees required by the City, County of Riverside, and other governmental agencies with jurisdiction over the Improvements.

**4.3 Time of Performance; Progress Reports.** The Participant shall commence and complete construction of all of the Improvements on the Site by the times established therefor in the Schedule of Performance.

**4.4 Cost of Development.** The cost of planning, designing, developing, and constructing the Improvements shall be borne solely by the Participant, excepting for the disbursement by City of the City Disbursement Amount as provided in Section 4.4.1 hereof. Except to the extent otherwise expressly set forth herein, all fees imposed by any governmental entity in connection with the

acquisition of the Site or the development of the Improvements shall be borne by Participant and shall be paid when due by Participant.

**4.4.1 Disbursement of the City Disbursement Amount.** The City Disbursement Amount shall be disbursed as drawdowns, as follows:

Disbursement for each category described above shall be made as progress payments during the Rehabilitation process subject to compliance with the following procedure:

(a) **Request for Payment.** Participant shall have submitted a request for payment to the City on a form supplied by the City, together with invoices from contractors and subcontractors and any other requested information and documents, indicating that the particular item for which payment is being requested is complete (if applicable).

(b) **Inspection of Work.** The City shall have inspected the particular item of work for which payment is being requested (if applicable) and shall have determined that such work has been completed in accordance with this Agreement and has been completed in a satisfactory manner in accordance with the standards of the applicable industry.

(c) **Verification of Amounts.** Amounts requested shall conform to budgeted amounts corresponding to the items for which payment is requested, as set forth in “The Scope of Work; Budget” (or, if the amounts exceed the amounts budgeted under that category, an offsetting saving equal or greater than any cost overrun under a particular category for which work has been completed or with respect to which the completion of such category of work is assured in the judgment of the City Manager).

(d) **No Default.** There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(e) **Representations and Warranties.** All representations and warranties of Participant herein contained shall be true and correct.

Within thirty (30) days following completion of the Rehabilitation, as determined by the City Manager, the City shall determine that portion of the remainder of the City Disbursement Amount which shall be disbursed to Participant. This final disbursement shall include costs of construction as well as allowances for payroll, staffing, administration, asset management, the Deemed Developer Fee, and a capital expense reserve up to the amounts established therefor in “the Scope of Work; Budget.” The City Manager may confer with the Participant concerning the amount of the final disbursement but the determination of the City Manager shall be final.

**4.5 Insurance Requirements.** Commencing as of initial disbursement of moneys by the City (but not later than recordation of the CC&Rs) and continuing throughout the Required Covenant Period, Participant shall maintain at Participant’s sole expense, with insurers reasonably approved by City, the following policies of insurance in form and substance reasonably satisfactory to City:

(a) workers’ compensation insurance and any other insurance required by law in connection with the Improvements or other work performed on the Site (to be in effect only while work is being performed on the Site);

(b) upon commencement of construction of the Improvements and at all times prior to completion of the Improvements, builder's risk-all risk insurance covering 100% of the replacement cost of all Improvements (including offsite and the materials) during the course of construction in the event of fire, lightning, windstorm, vandalism, earthquake, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);

(c) following completion of the Improvements, fire and hazard "all risk" insurance covering 100% of the replacement cost of the Improvements in the event of fire, lightning, windstorm, vandalism, earthquake (if available at commercially reasonable rates), malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);

(d) public liability insurance in amounts reasonably required by the City Manager from time to time, and in no event less than Two Million Dollars (\$2,000,000) for "single occurrence;"

(e) property damage insurance in amounts reasonably required by the City Manager from time to time, and in no event less than Two Million Dollars (\$2,000,000); and

(f) all other insurance reasonably required by the City Manager from time to time.

All such insurance shall provide that it may not be canceled or materially modified without 30 days prior written notice to City. The policies required under subparagraphs (b) and (c) shall include a "lender's loss payable endorsement" (Form 438BFU) in form and substance satisfactory to City, showing City as an additional insured and loss payee. City shall be an additional insured in the policies required under subparagraphs (d) and (e). No such insurance shall include deductible amounts to which City has not previously consented in writing. Certificates of insurance for the above policies (and/or original policies, if required by City) shall be delivered to City from time to time within 10 days after demand therefor. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Participant shall deliver to City evidence of renewal or replacement of such policy reasonably satisfactory to the City Manager.

Coverage provided hereunder by Participant shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City. None of the above-described policies shall require Participant to meet a deductible or self-insured retention amount of more than Five Thousand Dollars (\$5,000.00) unless approved in writing by the City Manager. All policies shall be written by good and solvent insurers qualified to do business in California and shall have a policyholder's rating of A or better in the most recent edition of "Best's Key Rating Guide -- Property and Casualty." The required certificate shall be furnished by Participant at the time set forth herein.

**4.5.1 Waiver of Subrogation.** Participant hereby waives all rights to recover against City (or any officer, employee, agent or representative of the City) for any loss incurred by Participant from any cause insured against or required by any Development Document to be insured against; provided, however, that this waiver of subrogation shall not be effective with respect to any

insurance policy if the coverage thereunder would be materially reduced or impaired as a result. Participant shall use its best efforts to obtain only policies which permit the foregoing waiver of subrogation.

**4.6 Obligation to Repair and Restore Damage Due to Casualty.** If during the period of construction the Improvements shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Participant, Participant shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be constructed pursuant to this Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Participant shall complete the same as soon as possible thereafter so that the Improvements can be occupied as an affordable housing project in accordance with this Agreement. In no event shall the repair, replacement, or restoration period exceed fourteen (14) months from the date Participant obtains insurance proceeds unless the City Manager, in his or her sole and absolute discretion, approves a longer period of time. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration, Participant may elect not to repair, replace, or restore the Improvements by giving notice to City (in which event Participant will be entitled to all insurance proceeds but Participant shall be required to remove all debris from the Site) or Participant may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by the City and the other governmental agency or agencies with jurisdiction, and the City may pursue remedies of its choosing under this Agreement, including without limitation termination.

**4.7 Indemnity.** Participant shall defend (by counsel satisfactory to City), indemnify and save and hold harmless City and their officers, contractors, agents and employees (collectively, the “Indemnitees”) from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys’ fees and court costs) arising from or relating to: (i) this Agreement (including without limitation Section 4.9 hereof); (ii) the disbursement of amounts equal to the City Disbursement Amount; (iii) a claim, demand or cause of action that any person has or asserts against Participant; (iv) any act or omission of Participant, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Site; (v) the ownership, occupancy or use of the Site; or (vi) any claims for relocation benefits or assistance in connection with the acquisition of the Site or the implementation of this Agreement. Notwithstanding the foregoing, Participant shall not be obligated to indemnify the City with respect to the consequences of any act of gross negligence or willful misconduct of the City. Participant’s obligations under this Section 4.7 shall survive the issuance of the Certificate of Completion and termination of this Agreement; the requirements under this Section 4.7 are in addition to and do not limit the obligations of the Participant under any of the instruments provided for as attachments to this Agreement, including without limitation the CC&Rs and the Resale Restriction Agreement.

The Participant shall reimburse the City immediately upon written demand for all costs reasonably incurred by the City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of the Development Documents and all related matters including the following: (a) the City’s commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Development Document, and (b) all claims, demands, causes of action, liabilities, losses,



commissions and other costs against which the City is indemnified under the Development Documents.

The Participant shall indemnify the City from any real estate commissions or brokerage fees which may arise from this Agreement or the Site, including without limitation the acquisition of the Site by the Participant, or the leasing of dwelling units on the Site. The Participant represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Participant agrees to hold the City harmless from any claim by any broker, agent or finder in connection with this Agreement, the activities by the Participant, or the Site.

In addition, and without limitation to the foregoing, Participant agrees to indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. This indemnity shall 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. At the request of the Participant, the City shall cooperate with and assist the Participant in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the City shall not be obligated to incur any expense in connection with such cooperation or assistance. Upon the Closing, the Participant shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, the Participant shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**4.8 Rights of Access.** Prior to the issuance of the Certificate of Completion, for purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as City representatives comply with all safety rules. City representatives shall, except in emergency situations, notify the Participant prior to exercising its rights pursuant to this Section 4.8; provided that City representatives shall in addition, have all rights and access to Site necessary or convenient to enforce building codes and other laws.

**4.9 Compliance With Laws.** Participant shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including all applicable federal and state labor standards (including without limitation provisions for payment of prevailing wages in connection with all construction of the Improvements), the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and the Fair Housing Act, 42 U.S.C. Section 3601 *et seq.* (and 24 C.F.R. Part 100),

the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.* Participant, including but not limited to its contractors and subcontractors, shall comply with Labor Code Section 1720, *et seq.*, and its implementing regulations, regarding the payment of prevailing wages and the Davis-Bacon Act (collectively, the “Prevailing Wage Laws”) with regard to the construction of the Improvements. Participant hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold the City, its officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Participant’s acts or omissions pertaining to the compliance with the Prevailing Wage Laws for the Improvements. Participant agrees and acknowledges that federal prevailing wages under the Davis-Bacon Act are applicable to the Improvements under the HOME Regulations, and Participant agrees to comply with the HOME Regulations (including without limitation or respect to the payment of federal prevailing wages).

Participant shall include a Section 3 Clause in all construction contracts and subcontracts with respect to the Site and any work undertaken thereon or with respect thereto. Participant shall comply with Section 3.

Without limitation as to Section 4.7 of this Agreement, Participant shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Participant of any applicable local, state and/or federal law, including, without limitation, the Rules and Regulations and any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and, if greater, prevailing wages under the Davis-Bacon Act); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; (3) failure by Participant to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law; and/or (4) failure to comply with the HOME Regulations and all regulations and laws applicable in connection thereafter.

**4.9.1 Selection of Subcontractors.** Participant or the General Contractor, as applicable, shall solicit no fewer than three (3) competitive bids from qualified, licensed, insured, and bonded Subcontractors for each portion of the construction work to be separately contracted for by each Participant or the General Contractor, as applicable, and Participant shall select the Subcontractor(s) that have submitted the lowest responsible and responsive bid for each such separately contracted-for portion of the Development. City shall have every reasonable right and opportunity to review all materials, bid packages, and related documents and to observe and attend all stages of and meetings related to such competitive bidding process, including without limitation a right to review the invitation to bidders and each submitted bid package and the right to be present when each bid is opened by Participant and/or the General Contractor and all selected Subcontractors shall be reasonably acceptable to the City Manager. Participant shall provide copies of all documents and other information reasonably necessary or appropriate to permit City to verify that Participant has solicited competitive bids from such qualified contractors pursuant to this Section 4.9.1 and

selected the lowest responsible and responsive Subcontractors as required herein, including copies of the invitation to bidders, all documents distributed to potential bidders by Participant, and all submissions received from bidding contractors in response thereto. Participant shall also submit to City evidence regarding each entity serving and/or contracting as the Subcontractor for each portion of the construction of the Development and all other on-site and off-site improvements required to be constructed in connection therewith in accordance with the Scope of Work: Budget, including all required licenses, certifications, insurance, etc., as determined in good faith by the City Manager.

**4.10 Nondiscrimination in Employment.** Participant certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability.

**4.11 Taxes and Assessments.** Participant shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site. Participant shall remove or have removed any levy or attachment made on the Site or any part thereof which is owned or leased by Participant, or assure the satisfaction thereof within a reasonable time, but in no event to exceed sixty (60) days. The Participant shall additionally defend, indemnify, and hold harmless the City from and against any taxes, assessments, mechanic's liens, claims of materialmen and suppliers, or other claims by private parties in connection with (a) activities undertaken by the Participant or (b) the Site.

**4.12 Liens and Stop Notices.** Participant shall not allow to be placed on the Site or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Improvements the Participant shall within thirty (30) days of such recording or service or within five (5) days of City's demand whichever last occurs:

- (a) pay and discharge the same; or
- (b) effect the release thereof by recording and delivering to City a surety bond in sufficient form and amount, or otherwise; or
- (c) provide City with indemnification from the Title Company against such lien or other assurance which City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

**4.13 Certificate of Completion.** Promptly after completion of the Improvements in conformity with this Agreement, City will furnish the Participant with a Certificate of Completion substantially in the form of Attachment No. 8 hereto. City shall not unreasonably withhold such Certificate of Completion; provided that a refusal to provide a Certificate of Completion in the event of objection by HUD or the failure by HUD to approve disbursements by City under this Agreement shall be conclusively deemed to be reasonable for purposes of this Section 4.13. The Certificate of Completion shall be a conclusive determination of satisfactory completion of the Improvements and the Certificate of Completion shall so state. If City refuses or fails to furnish a Certificate of Completion after written request from Participant, City shall, within fifteen (15) days of receipt of written request therefor, provide Participant with a written statement of the reasons City refused or failed to furnish the Certificate of Completion. The statement shall also contain City's opinion of the actions Participant must take to obtain the Certificate of Completion or notification that HUD has



failed to approve of the making of disbursements under this Agreement. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

**4.14 Further Assurances.** The City will undertake good faith efforts to obtain an appraisal or a review appraisal (in the event Participant makes available to City for review an appraisal) prior to the time set forth in this Agreement for the satisfaction of the Conditions Precedent to Disbursement.

Participant shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to City all documents, and take all actions, reasonably required by City from time to time to confirm the rights created or now or hereafter intended to be created under the Development Documents or otherwise to carry out the purposes of the Development Documents. Participant shall, in addition, cooperate with HUD and promptly and fully provide such documentation as may from time to time be requested by HUD.

**4.15 City Investment; Preservation of Affordable Rental Housing Resource; Credit Based Upon Developer Fee at Stabilized Occupancy.** The City will be providing one hundred percent (100%) of the equity (and approximately 100% of the total funding) required for the purchase of the Site and the improvement of the Site under the Scope of Work: Budget. The City's willingness to enter into this Agreement and devote the level of funding as prescribed under this Agreement is based upon assurance that all Units on the Site will be maintained available at Affordable Rent at Prescribed Rent Levels as Qualifying Rentals throughout the Required Covenant Period.

The Participant is a sophisticated party with substantial experience in the acquisition, improvement and operation of affordable rental housing and with California real estate law. Participant has reviewed, and has consulted with legal counsel of Participant's choosing, concerning this Agreement, including without limitation the HOME Regulations, the Rules and Regulations, the Senior Note, the Equity Share Note, the Capital Recovery Note as well as the City Deed, the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust.

The Participant agrees and acknowledges that it is reasonable that the City have all rights and remedies, including without limitation equity sharing, limits upon resale or transfer, and such other restrictions or prohibitions as are provided under this Agreement and its attachments including without limitation the City Deed, the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Equity Share Note, the Capital Recovery Note, the Senior Deed of Trust, the Equity Share Deed of Trust and the Capital Recovery Deed of Trust.

Upon the achievement of Stabilized Occupancy in conformity with this Agreement (including the requirement of occupancy of households of the appropriate income category paying rent that is not greater than Affordable Rent), the sum of Forty Thousand Dollars (\$40,000.00), to reflect a developer fee, will be applied as a one-time credit against the outstanding principal amounts under the Capital Recovery Note (as to which a credit of \$40,000 will be applied). The Participant will promptly inform the City that it is achieved Stabilized Occupancy in a writing referencing this Section 4.15 and requesting application of the foregoing credit and will provide evidence establishing such circumstance to the reasonable satisfaction of the City Manager. Upon confirmation by the City Manager that Stabilized Occupancy has been received, the City Manager will cause the account maintained for the Capital Recovery Note to reflect the credit described in the foregoing portion of

this paragraph; such credit shall thereupon be deemed applicable without necessity of re-executing the Capital Recovery Note.

## 5. COVENANTS AND RESTRICTIONS

**5.1 Use Covenants.** Participant covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that the Participant shall devote the Site to the uses specified in and shall operate in conformity with this Agreement, the City Deed and the CC&Rs. All uses conducted on the Site, including, without limitation, all activities undertaken by the Participant pursuant to this Agreement, shall conform to all applicable provisions of the City Municipal Code and, to the extent applicable, the Redevelopment Plan.

### 5.2 Affordable Housing Requirements.

**5.2.1 Number of Affordable Units.** Participant agrees to make available, restrict occupancy to, and rent all of the Required Affordable Units at Affordable Rent. There shall be four (4) Required Affordable Units on the Site, all of which shall remain available at Affordable Rent, all of which are one (1) bedroom, one (1) bath units, three of which shall be available to and occupied by Low Income Households and one of which shall be available to and occupied by Very Low Income Households. An example of the calculation of Affordable Rent for the Required Affordable Units is attached hereto as Attachment No. 5 and incorporated herein; provided that in the event of conflict between such example and the definitions contained within the body of this Agreement, the definitions shall control: the Affordable Rent for the Housing Units to be rented to Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Median Income for Riverside County as determined and published annually by TCAC for a family of a size appropriate to the unit, or, if lower, rents determined in accordance with the HOME Regulations. The Affordable Rent for the Housing Units to be rented to Very Low Income Households shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Median Income for Riverside County as determined and published annually by TCAC for a family of a size appropriate to the unit, or, if lower, rents determined in accordance with the HOME Regulations.

Participant shall, and shall cause its Property Manager to, operate the Project and cause occupancy of all Housing Units thereon in conformity with these covenants and this Agreement.

**5.2.2** For purposes of this Agreement, “Affordable Rent” means the total of monthly payments for (a) use and occupancy of each Housing Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Participant which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, or cable TV or internet services, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Participant. No additional charge shall be assessed against tenant households of the Housing Units for any social or supportive services provided at the Site and/or as a part of Participant’s compliance with the legal requirements imposed in connection with any Project Based Section 8 assistance pursuant to Section 409.

**5.2.3 Duration of Affordability Requirements.** The Required Affordable Units shall be maintained as rental units available at and rented to Low Income Households at Affordable Rent throughout the Required Covenant Period, as more particularly set forth in the CC&Rs.

**5.2.4 Selection of Tenants.** Participant shall be responsible for the selection of tenants for the Required Affordable Units in compliance with the criteria set forth in Section 5.3 of this Agreement. Age shall not be a factor in the selection of tenants.

**5.2.5 Income of Tenants.** Each tenant shall be a Low Income Household which meets the eligibility requirements established for the corresponding Required Affordable Unit, and Participant shall obtain a certification from each tenant renting or leasing each housing unit which substantiates such fact. Participant shall verify the income certification of each tenant as set forth in Section 5.3 hereof. Prior to the rental or lease of any housing unit on the Site to a tenant, and annually thereafter, the Participant shall submit to City or its designee, at Participant's expense, a completed income computation and certification form, in a form to be provided by City. Participant acknowledges that City shall, to the extent provided under the HOME Regulations or requested by HUD, make such reports available to HUD.

**5.2.6 Determination of Affordable Rent for the Housing Units.** Each Required Affordable Unit shall be rented at an Affordable Rent.

“Household size appropriate to the unit,” for the purpose of the calculation of rent herein (and without regard to actual occupancy, there being no restrictions on the number of occupants allowable per dwelling unit imposed by this Agreement), means three persons for each two bedroom unit; provided that the maximum monthly rental amount of the Required Affordable Units shall be adjusted annually by the formula set forth above upon the promulgation of revised figures concerning Median Income for the Area by regulation of the California Department of Housing and Community Development (“HCD”). Actual rent charged may be less than such maximum rent.

Notwithstanding any other provisions of this Agreement, to the extent that the HOME Requirements are more restrictive with respect to the requirements applicable to tenant selection, tenant income levels and unit rent levels than as otherwise provided in this Agreement, the City Covenants or the Authority Participant CC&Rs, then the HOME Requirements shall control and the Participant's compliance with the more restrictive requirements thereof shall not be a default hereunder.

### **5.3 Verifications.**

**5.3.1 Income Verification.** Participant shall verify the income of each proposed and existing tenant of the Required Affordable Units.

**5.3.2 Annual Reports.** Following the issuance of the Certificate of Completion, and on or before March 15 of each Year, Participant, at its expense, shall submit to City or its designee the reports in the manner described in Health and Safety Code Section 33418, as the same may be amended from time to time, with each such report to be in the form prescribed by City. Each annual report shall cover the immediately preceding fiscal year.

The Participant shall maintain on file each tenant's executed lease and Income Verification and rental records for the Required Affordable Units. The Participant shall maintain

complete and accurate records pertaining to the Required Affordable Units and will permit any duly authorized representatives of the City to inspect the books and records of the Participant pertaining to this Agreement and the Required Affordable Units. The Participant shall prepare and submit to the City (or its designee) annually commencing March 1, 2017 and continuing throughout the Required Covenant Period, a Certificate of Continuing Program Compliance. Such documentation shall state for each Required Affordable Unit the unit size, the rental amount, the number of occupants, and the income of the occupants and any other information which may be used to determine compliance with the terms of this Agreement. Participant acknowledges that City shall make all such reports available to the extent provided under the HOME Regulations or requested by HUD, to HUD.

**5.4 Maintenance of Site.** Participant agrees for itself and its successors in interest to the Site, to maintain the improvements on the Site in conformity with the City Municipal Code and the conditions set forth in the CC&Rs, and shall keep the Site free from any accumulation of debris or waste materials. During such period, the Participant shall also maintain the landscaping planted on the Site in a healthy condition.

**5.5 Nondiscrimination Covenants.** Participant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Participant or any person claiming under or through the Participant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The foregoing covenants shall run with the land.

Participant shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

**In leases:** “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased. The foregoing covenants shall run with the land.”

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

**5.6 Effect of Violation of the Terms and Provisions of this Agreement after Completion of Construction.** The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site or in the Project Area of the Redevelopment Plan. The City shall have the right, if the Agreement or any covenants in any agreement pursuant to this Agreement including without limitation the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust, the Equity Share Note or the Equity Share Deed of Trust are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and such covenants may be entitled.

**5.7 No Subordination of Covenants.** The CC&Rs shall not be subordinated. In addition, the Participant will not request and the City will not subordinate any of the Senior Deed of Trust, the Equity Share Deed of Trust, the Capital Recovery Deed of Trust and the Resale Restriction Agreement.

## **6. PARTICIPANT’S GENERAL REPRESENTATIONS AND WARRANTIES.**

As a material inducement to City to enter into this Agreement, Participant represents and warrants to the City that:

**6.1 Formation, Qualification and Compliance.** Participant (a) is a California nonprofit public benefit corporation validly existing and in good standing under the laws of the State of California; (b) has all requisite and the authority to conduct its business and own, purchase, improve and sell its properties. Participant is in compliance in all material respects with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and



has accomplished all filings, registrations and qualifications with any governmental agency that are necessary for the transaction of its business; (c) Participant has and will in the future duly authorize, execute and deliver this Agreement and any and all other agreements and documents required to be executed and delivered by the Participant in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement; (d) Participant does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of the Participant to carry out its obligations hereunder; (e) There are no material pending or, so far as is known to the Participant, threatened, legal proceedings to which the Participant is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed by the Participant to the City in this Agreement which could materially adversely affect the ability of the Participant to carry out its obligations hereunder; (f) Participant is a community development organization (or “CHODO”) within the meaning of § 92.2 of the HOME Regulations; (g) Participant has reviewed the Rules and Regulations, the HOME Regulations, and is familiar with and prepared to comply with all terms thereof; and (h) There is no action or proceeding pending or, to the Participant’s best knowledge, threatened, looking toward the dissolution or liquidation of the Participant and there is no action or proceeding pending or, to the Participant’s best knowledge, threatened by or against the Participant which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of the Participant to carry out its obligations hereunder.

Each of the foregoing items (a) to (h), inclusive, shall be deemed to be an ongoing representation and warranty. The Participant shall advise the City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (h), inclusive.

**6.2 Execution and Performance of Development Documents.** Participant has all requisite authority to execute and perform its obligations under the Development Documents. The execution and delivery by Participant of, and the performance by Participant of its obligations under, each Development Document has been authorized by all necessary action and do not and will not violate any provision of, or require any consent or approval not heretofore obtained under, any articles of incorporation, by-laws or other governing document applicable to Participant.

**6.3 Covenant Not to Transfer Except in Conformity.** Excepting for the rental of individual dwelling units to Low Income Households as occupants in the regular course of business (which rental activity shall not be limited by this Section 6.3), the Participant shall not sell, lease, or otherwise transfer or convey all or any part of the Site, or any interest therein, unless the Participant has first obtained the prior written consent of the City Manager, which consent may be granted or refused in the City Manager’s sole and absolute discretion. In connection with the foregoing consent requirement, Participant acknowledges that City relied upon Participant’s particular expertise and its status as a CHODO in entering into this Agreement and continues to rely on such expertise and status to ensure the satisfactory completion of all of the Improvements, and the marketing and rental of the Required Affordable Units to Low Income Households at Affordable Rent to advance the City’s objectives in providing affordable housing units and to afford the community a long-term, quality affordable housing resource.

## **7. DEFAULTS, REMEDIES, AND TERMINATION.**

**7.1 Default Remedies.** Subject to the extensions of time set forth in Section 7.10 of this Agreement, failure by a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter,

constitutes a “Default” or “Event of Default” under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default. Except as otherwise expressly provided in this Agreement, and without limiting or affecting rights of parties hereto to terminate this Agreement, the claimant shall not institute any proceedings against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy the specified Default and shall complete such cure, correction or remedy with diligence.

Notwithstanding any provision of this Agreement to contrary effect, in no event shall the City be liable under this Agreement in the event HUD objects to or fails to approve or consent to this Agreement or the mailings of disbursements hereunder by the City.

**7.2 Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any party may institute an action at law or 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. Such legal actions must be instituted in the Superior Court of the County of Riverside, State of California, or in the federal court for the Central District of California.

**7.3 Termination by the Participant.** In the event that:

(a) the Participant is not in default under this Agreement and City does not disburse funds to or for the benefit of the Participant in the manner and condition and by the date provided in this Agreement; or

(b) the Participant does not approve the condition of title or the environmental condition of the Site; or

(c) in the event of any default of City prior to the acquisition of the Site by the Participant which is not cured within the time set forth in Section 7.1 hereof; and

any such failure is not cured within the applicable time period after written demand by the Participant, then this Agreement may, at the option of the Participant, be terminated by Notice thereof to City; provided that the Participant shall have delivered to the City the documents required to be delivered to the City pursuant to this Agreement. From the date of the Notice of termination of this Agreement by the Participant to City and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties.

**7.4 Termination by City.** In the event that prior to the time established in the Schedule of Performance for the satisfaction of the Conditions Precedent to Disbursement:

**7.4.1** Participant (or any successor in interest) assigns this Agreement or any rights therein or in the Site in violation of this Agreement; or

**7.4.2** Participant does not fulfill the Conditions Precedent to Disbursement and such failure is not caused by City; or

**7.4.3** Participant fails to execute on or more of the City Deed, the CC&Rs, the Senior Note, the Senior Deed of Trust, the Equity Share Note, the Capital Recovery Note, the Equity

Share Deed of Trust, the Capital Recovery Deed of Trust or such other additional documentation as may be requested by the City or HUD; or

**7.4.4** Participant is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 7.1 hereof; or

**7.4.5** The City does not obtain, prior to the time set forth in this Agreement for the satisfaction of the Conditions Precedent to Disbursement, an appraisal or a review appraisal conforming to 49 C.F.R. §24.103 and which expresses an opinion of value as to the Site of at least One Hundred Eighty Nine Thousand Fifty Dollars (\$263,000.00); or

**7.4.6** The Participant does not approve the condition of title or the environmental condition of the Site; or

**7.4.7** The Prior Owner does not convey the Site to the City prior to the time established for the Closing; or

**7.4.8** The City receives notification from HUD that HUD does not consent to this Agreement or disapproves this Agreement or the making of disbursements by the City provided for in this Agreement;

then this Agreement and any rights of the Participant or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of City, be terminated by City by Notice thereof to the Participant. From the date of the Notice of termination of this Agreement by City to the Participant and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties, except that City may pursue any remedies it has hereunder.

**7.5** **Acceptance of Service of Process.** In the event that any legal action is commenced against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced against the Participant, service of process on the Participant shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

**7.6** **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

**7.7** **Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**7.8** **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement; provided that, concerning the HOME Regulations, federal laws shall control in the event of conflict.



**7.9 Federal Funding of HOME Loan.** Due to the source of funding from HOME Program funds, which is a federal revenue source, Participant shall comply with all applicable Federal Program Limitations, including without limitation, the following federal provisions.

**7.9.1 Property Standards.** Participant agrees to ensure that Construction of the Project and operation of the Housing Units during the HOME Compliance Period, both the Senior Citizen Housing Units and the Non Senior/Family Housing Units and all ancillary and appurtenant improvements, will comply with all applicable requirements of the HOME Regulations, including 24 CFR §92.251, including the following requirements:

**7.9.2 State and Local Requirements.** The Project and all Housing Units and common areas at the Site shall meet all applicable State and local codes, ordinances, and zoning requirements, including all applicable requirements set forth in the Municipal Code and all applicable State and local residential and building codes. The Project and all Housing Units and common areas at the Site must meet all such applicable requirements upon Project completion.

**7.9.3 HUD Requirements.** The Project and all Units and common areas at the Site shall also meet the requirements described in paragraphs (i) through (iv) of this Section 1302.1(b):

**7.9.4 Accessibility.** The Project and all Units and common areas at the Site shall meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

**7.9.5 Disaster Mitigation.** Where relevant, the Project must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

**7.9.6 Written Cost Estimates, Construction Contracts and Construction Documents.** The Construction Contract(s) and development plans must describe the Construction work to be undertaken in adequate detail so that the City can conduct inspections in accordance with the HOME Regulations. The Participant shall also provide written cost estimates for Construction for City's review; City shall determine whether such cost estimates are reasonable.

**7.9.7 Construction Progress Inspections.** Participant shall permit and facilitate progress and final inspections of Construction by the City to ensure that work is done in accordance with the applicable codes, the Construction Contract(s), and Development Plans.

**7.9.8** Participant shall maintain the Project, including all Units and common areas at the Site: (i) as decent, safe, and sanitary housing in good repair, (ii) free of all health and safety defects and life-threatening deficiencies, and (iii) in compliance with the lead-based paint requirements in 24 CFR Part 35.

**7.9.9 Inspections; Corrective and Remedial Actions.** In accordance with the HOME Regulations, City shall undertake ongoing inspections of the Project in accordance with §92.504(d).

City has developed written inspection procedures and procedures for ensuring that timely corrective and remedial actions are taken by the Participant to address identified deficiencies.

**7.9.10 Labor Standards.** In addition to compliance with Section 490, to the extent required by applicable federal and/or state laws, the Construction Contract for the Project, as well as any other contract for the Construction work, shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of the United States Department of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §276a–276a-5), will be paid to all laborers and mechanics employed in the Construction work, and such contract(s) shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §3701, et seq.). Participating contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participant shall supply to City certification, in form and substance satisfactory to HUD and City Manager, as to compliance with the applicable provisions of this Section before receiving any disbursement of federal funds for the Construction work. If required by applicable federal and/or state law, Participant shall require the General Contractor to implement and enforce all applicable prevailing wage and labor laws, including California Labor Code Section 1720, Davis-Bacon, and other applicable labor laws and regulations including, e.g., the requirement that all workers sign in and sign out of the job site (to the extent such requirement is applicable by law).

**7.9.11 Handicapped Accessibility.** Participant shall comply with (a) Section 504 of the Rehabilitation Act of 1973, and implementing regulations at 24 CFR 8C governing accessibility of projects assisted with federal funds; and (b) the Americans with Disabilities Act of 1990, and implementing regulations at 28 CFR 35–36 in order to provide handicapped accessibility to the extent readily achievable; and (c) the Uniform Federal Accessibility Standards (UFAS) pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157, as amended.

**7.9.12 Use of Debarred, Suspended, or Ineligible Participants.** Participant shall comply (and cause the General Contractor to comply) with the provisions of 24 CFR 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status. The Contractor, each subcontractor, and any other contractors or subcontractors or agents of Participant (subject to compliance with 24 CFR part 135) shall have provided to City the certification in appendix B of 24 CFR Part 24 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from this Project, and City shall be responsible for determining whether each contractor has been debarred.

**7.9.13 Maintenance of Drug-Free Workplace.** Participant shall certify that Participant will provide a drug-free workplace in accordance with 2 CFR 2429.

**7.9.14 Lead-Based Paint.** City, as a recipient of federal funds, has modified and conformed all of its federally funded housing programs to the Lead-Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. §4800, et seq., specifically §§4821 4846, and the implementing regulations thereto. In this regard, Participant shall comply with all applicable federal requirements relating to lead-based paint.

**7.9.15 Affirmative Marketing.** Participant shall adopt and implement affirmative marketing procedures and requirements at the Site in accordance with Section 92.351 of the HOME Regulations.

**7.9.16 Nondiscrimination, Equal Opportunity and Fair Housing.** Participant shall carry out the Project and perform its obligations under this Agreement in compliance with all of the federal laws and regulations regarding nondiscrimination equal opportunity and fair housing described in 24 CFR 92.350 and 24 CFR 5.105.

**7.9.17 Energy Conservation Standards.** As applicable to the Project, Participant shall cause the Site to meet the cost-effective energy conservation and effectiveness standards in 24 CFR 965 and 24 CFR 990.185.

**7.9.18 Displacement and Relocation.** Participant acknowledges and agrees that, pursuant to Federal Program Limitations and consistent with the other goals and objectives of that part, City must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of the Construction work. In the event displacement were to occur, Participant shall cause all Relocation of tenants and occupants at the Project to be conducted in accordance with the Relocation Laws and all Federal Program Limitations. Participant further agrees to cooperate with City in meeting the requirements of the Federal Program Limitations and shall take all actions and measures reasonably required by City Manager (or her duly authorized representative) in connection therewith.

**7.9.19 Requests for Disbursements of Funds.** Participant may not request disbursements of funds hereunder until the funds are needed for payment of eligible costs of the Project. The amount of each request shall be limited to the amount needed for the acquisition of the Conforming Leasehold Interest in the Site and the Construction as set forth in the Final Budget.

**7.9.20 Eligible Costs.** Participant shall only use HOME Program funds to pay costs defined as “eligible costs” under Federal Program Limitations.

**7.9.21 Records and Reports.** Participant shall maintain and from time to time submit to City such records, reports and information as City Manager may reasonably require in order to permit City to meet the recordkeeping and reporting requirements required of them pursuant to 24 CFR 92.508. Without limiting the following, Participant shall maintain records and submit annual reports as required by this Agreement.

**7.9.22 Conflict of Interest.** Participant shall comply with and be bound by the conflict of interest provisions set forth at 24 CFR 570.611.

**7.9.23 Layering Review.** Participant acknowledges that a layering review has been performed prior to the Date of Agreement and shall be updated and performed in accordance with Federal Program Limitations as a condition to Closing. In connection with such review Participant acknowledges and agrees it shall be required to represent and certify to City that no government assistance other than the loans as provided by City pursuant to this Agreement has been obtained or is contemplated to be obtained for the Construction and operation of the Project on the Site. If and when, such layering review is conducted, Participant agrees to notify City in the event that it applies for or proposes to use governmental funds, other than as listed in the previous sentence, for the Project at the Site.

7.10 [Intentionally Omitted.]

**7.11 Enforced Delay; Extension of Times of Performance; Other Limited Extensions by City Manager.** In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts or omissions of another party, or acts or failures to act of the City or any other public or governmental agency or entity (excepting that acts or failures to act of City shall not excuse performance by City). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Participant. Notwithstanding any provision of this Agreement to the contrary, or the lack of funding to complete the Development shall not constitute grounds of enforced delay pursuant to this Section 7.10. Notwithstanding the foregoing, times for performance shall not be excused in the event of the objection by HUD or the failure by HUD to consent to or approve of the making of disbursements hereunder.

The City Manager shall have the authority to approve extensions on behalf of City to approve extensions of time not to exceed a cumulative total of sixty (60) days.

**7.12 Transfers of Interest in Agreement or of Site.** Section 7.11, and all subsections of this Section 7.11, shall apply to transfers prior to the Transfer. Any transfers occurring or proposed after the Transfer are subject to the provisions therefor of the CC&Rs.

**7.12.1 Prohibition.** The qualifications and identity of the Participant are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with the Participant. For the period commencing upon the date of this Agreement and until the end of the Required Covenant Period, no voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement, nor shall the Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Development thereon (excepting the rental of Units at Affordable Rent to Low Income Households in strict conformity with this Agreement and the CC&Rs) without prior written approval of City, except as expressly set forth herein.

**7.12.2 Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, the City shall not unreasonably withhold its approval of an assignment of this Agreement or conveyance of the Site, or any part thereof, in connection with the conveyance or dedication of any portion of the Site to the City, or the granting of easements or permits to facilitate construction of the Development.

In the event of a proposed assignment by Participant under subparagraphs 7.11.2 through 7.11.3, inclusive, Participant agrees that at least thirty (30) days prior to such assignment it shall give written notice to City including a request for approval of such assignment and satisfactory evidence that the assignee has assumed jointly with Participant the obligation to perform under this Agreement.

**7.12.3 City Consideration of Requested Transfer.** City agrees that it will consider in good faith a request made pursuant to this Section 7.11 after the achievement of occupancy of one hundred percent (100%) of the Units in conformity with this Agreement following the completion of the Improvements, provided that: (i) the Participant causes to be delivered to City written evidence from HUD that HUD consents to and does not object to the action requested; (ii) the Participant pays, or is prepared to pay concurrent with transfer, the amount due under the Equity Share Note in connection with such transfer; (iii) the Participant delivers written notice to City requesting such approval, which notice and the CC&Rs remain in full force and effect; (iv) the Participant is not in default of this Agreement or any attachments hereto; (v) the Participant provides detailed information regarding the transferee (the background, training, experience relative to the operation of affordable rental projects, and its capitalization) and of the proposed transfer (including price, terms of payment, time and place for closing); and/or the agreement of the transferee to be bound by and subject to all of the Development Documents, including without limitation, the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Capital Recovery Note, the Equity Share Note (which shall be adjusted upon transfer based upon the receipt of equity sharing moneys by the City, as more fully described in the Equity Share Note), the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust; and (vi) the Participant pays to City the sum of Five Thousand Dollars (\$5,000.00) (“Special Charges”), on a nonrefundable basis to assist City in defraying its cost to conduct due diligence, consider and process any such request (amounts so paid as Special Charges shall not be applied as payments due under the Equity Share Note or any other Promissory Note). Evidence regarding any proposed assignee or purchaser shall be detailed concerning the proposed assignee’s or purchaser’s development and/or operational qualifications and experience, its financial commitments and resources, and shall, in addition, describe in detail the financial terms of such assignment (including the consideration proposed to flow to the Participant or Related Entity and/or any of the Principals) in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 7.11, and as reasonably determined by City. Upon receipt of such request (including payment of the amount due as the equal share), the City shall evaluate each proposed transferee or assignee on the basis of its development and/or qualifications and experience in the operation of facilities similar to the Development, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 7.11 applies, which City reasonably determines does not possess sufficient qualifications. An assignment and assumption agreement in form satisfactory to City’s legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Participant’s written notice requesting approval of an assignment or transfer pursuant to this Section 7.11, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Participant shall promptly furnish to City such further information as may be reasonably requested. No such approval shall be given without receipt by the City of written evidence of the consent or approval by HUD.

Because one hundred percent (100%) of moneys for site acquisition and renovation are being provided by the City, it is not contemplated that mortgages or deeds of trust, excepting for those for the City as beneficiary under this Agreement, shall be recorded as to the City during the Required Covenant Period; any additional or other mortgages, deeds of trusts or liens securing repayment shall require the prior written approval of the City Manager.

**7.12.4 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Participant and its permitted successors and assigns. Whenever



the term “Participant” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**7.12.5 Assignment by City.** City may assign or transfer any of its rights or obligations under this Agreement with the approval of the Participant, which approval shall not be unreasonably withheld; provided, however, that City may assign or transfer any of its interests hereunder at any time without the consent of the Participant.

**7.13 Non-Liability of Officials and Employees of City.** No member, official, officer or employee of the City shall be personally liable to the Participant, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Participant or its successors, or on any obligations under the terms of this Agreement.

**7.14 Relationship between City and Participant.** It is hereby acknowledged that the relationship between the City and the Participant is not that of a partnership or joint venture and that City and Participant shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, including the Attachments hereto, the City shall have not any obligations with respect to the development, operation, maintenance or management of the Development.

**7.15 City Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by the City the City Manager is authorized to act on behalf of the City unless specifically provided otherwise or the law otherwise requires.

**7.16 Real Estate Brokers.** City and Participant each represent and warrant to each other that no broker or finder is entitled to any commission or finder’s fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

**7.17 Attorneys’ Fees.** In any action among the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys’ fees (based upon the rates customarily charged by the attorneys to private clients).

## **8. MISCELLANEOUS**

**8.1 Obligations Unconditional and Independent.** Notwithstanding the existence at any time of any obligation or liability of City to Participant, or any other claim by Participant against City, in connection with the Site or otherwise, Participant hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Participant’s obligations under this Agreement (including without limitation the attachments hereto), or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Participant of any of its obligations under the Development Documents.

**8.2 Notices.** All notices, demands, approvals and other communications provided for in the Development Documents shall be in writing and be delivered to the appropriate party at its address as follows:

If to Participant: Riverside Housing Development Corporation  
3985 University Avenue  
Riverside, CA 92501  
Attn: Bruce Kulpa

If to City: City of Moreno Valley  
14177 Frederick Street  
P.O. Box 6459  
Moreno Valley, CA 92552-0805  
Attention: Economic Development Director

with a copy to: City Clerk  
City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

**8.3 Survival of Representations and Warranties.** All representations and warranties in the Development Documents shall survive the rental of the Required Affordable Units and have been or will be relied on by City notwithstanding any investigation made by City.

**8.4 No Third Parties Benefited.** This Agreement is made for the purpose of setting forth rights and obligations of Participant and the City; no other person shall have any rights hereunder or by reason hereof. There shall be no third party beneficiaries of this Agreement.

**8.5 Binding Effect; Assignment of Obligations.** This Agreement shall bind, and shall inure to the benefit of, Participant, the City and their respective successors and assigns. Participant shall not assign any of its rights or obligations under any Development Document without the prior written consent of the City Manager, which consent may be withheld in the City Manager's sole and absolute discretion. Any such assignment without such consent shall, at City's option, be void. In connection with the foregoing consent requirement, Participant acknowledges that City relied upon Participant's particular expertise in entering this Agreement and continues to rely on such expertise to ensure the satisfactory completion of the Improvements and the use of the Required Affordable Units in conformity with this Agreement.

**8.6 Counterparts.** Any Development Document may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

**8.7 Prior Agreements; Amendments; Consents.** This Agreement (together with the other Development Documents) contains the entire agreement between City and Participant with respect to the Site, and all prior negotiations, understandings and agreements with respect to such matters are superseded by this Agreement and such other Development Documents. No modification of any Development Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and



then only in the specific instance and for the specific purpose given. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 46 and Attachments 1 through 19, which constitutes the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the City, the City and the Participant, and all amendments hereto must be in writing by the appropriate authorities of the City and the Participant.

**8.8 Governing Law.** All of the Development Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California as well as the Rules and Regulations, the HOME Regulations, as well as the laws and regulations referenced therein. Participant irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Riverside or the United States District Court of the Central District of California, as City may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement or the other Development Documents. Assuming proper service of process, Participant also waives any objection regarding personal or in rem jurisdiction or venue.

**8.9 Severability of Provisions.** No provision of any Development Document that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Development Documents are hereby declared to be severable.

**8.10 Headings; Interpretation.** Article and section headings are included in the Development Documents for convenience of reference only and shall not be used in construing the Development Documents. This Agreement shall be interpreted in a manner consistent with the public interest in assuring the continued availability of rental units at Affordable Rents to Low Income Households, enforceable by City, as provided under this Agreement.

**8.11 Conflicts.** In the event of any conflict between the provisions of this Agreement and those of any other Development Document, this Agreement shall prevail; provided however that, with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

**8.12 Time of the Essence.** Time is of the essence of all of the Development Documents.

**8.13 Conflict of Interest.** No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

**8.14 Warranty Against Payment of Consideration.** Participant warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

**PARTICIPANT:**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

**CITY:**

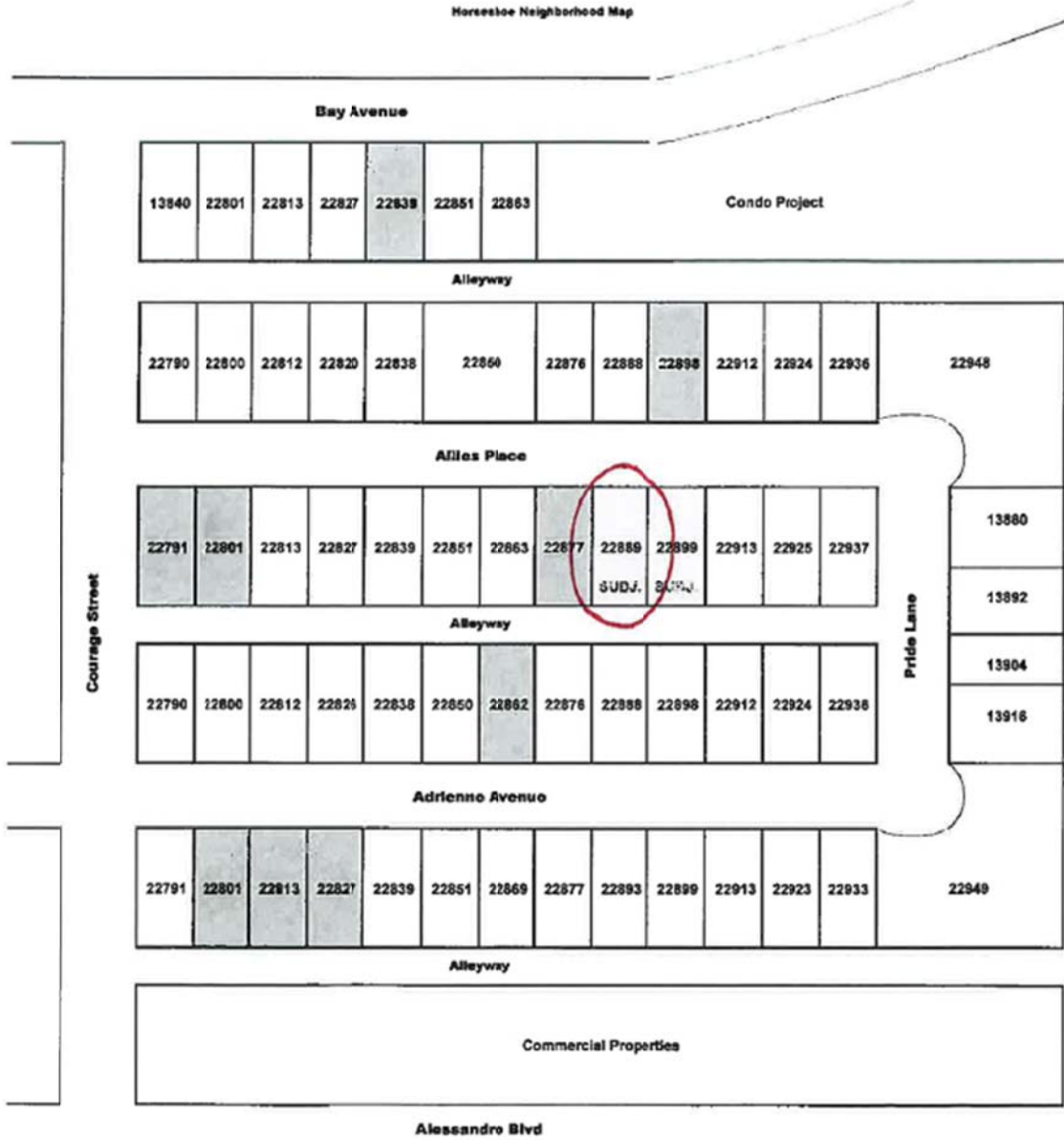
**CITY OF MORENO VALLEY**, a municipal corporation

By: \_\_\_\_\_  
City Manager

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

ATTACHMENT NO. 1

SITE MAP



Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 2**  
**LEGAL DESCRIPTION OF THE SITE**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 39 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-009

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 3**  
**SCHEDULE OF PERFORMANCE**

For the purposes of this Schedule of Performance, the “Date of Agreement” is September 22, 2015. The City Manager may extend by not more than sixty (60) days the time under this Schedule of Performance by which any obligation of Participant shall be performed.

- |  |  |
|--|--|
| 1. <u>Satisfaction of Conditions Precedent to Closing.</u> Participant shall satisfy the Conditions Precedent to Closing.  | Not later than February 9, 2016.   |
| 2. <u>Closing.</u> The conveyance of the Site by the City to the Participant effected by the recording of the City Deed, which shall be accomplished concurrent with the recording of the CC&Rs, the Resale Restriction Agreement, the Senior Deed of Trust, the Second Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust. | Within thirty (30) days after the satisfaction of the Conditions Precedent to Closing and not later than the sixtieth (60th) day after the later to occur of (i) the Date of Agreement or (ii) the acquisition of title to the Site by the City from the Prior Owner; provided that in no event shall the Closing occur after March 9, 2016. |
| 3. <u>Commencement of Construction.</u> The Participant shall have commenced construction of the Improvements.   | Within thirty (30) days after the earlier to occur of: (i) the Closing, or (ii) the time established in this Schedule of Performance for the Closing (per item 2, above).  |
| 4. <u>Completion of Construction.</u> Participant shall complete construction of the Improvements.   | Within ninety (90) days after the earlier of (i) the commencement of construction or (ii) the time established in this Schedule of Performance for the commencement of construction of the Improvements.   |
| 5. <u>Rental Units Occupied.</u> Participant causes the Required Affordable Units to be occupied using the Prescribed Rent Levels in conformity with the Agreement.  | Within sixty (60) days after the earlier of (i) completion of construction or (ii) the time established for completion of construction in this Schedule of Performance.  |

ATTACHMENT NO. 4

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

TO: City of Moreno Valley
14177 Frederick Street
Moreno Valley, California 92552-0805
Attention: City Manager

The undersigned, \_\_\_\_\_, being duly authorized to execute this Certificate of Continuing Program Compliance (this "Certificate") on behalf of Riverside Housing Development Corporation, a California nonprofit public benefit corporation (the "Participant"), hereby represents and warrants that:

1. He has read and is thoroughly familiar with the provisions of the Affordable Housing Agreement (the "AHA") by and between the City and the Participant dated as of September 22, 2015, including without limitation the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Senior Deed of Trust, the Equity Share Note, the Equity Share Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust and all other attachments thereto. Capitalized terms used herein shall have the same meaning as that set forth in the AHA; and

2. As of the date of this Certificate, the following number of completed residential units at the Site: (i) are currently occupied by Very Low Income Households at Affordable Rent; (ii) are currently occupied by Lower Income Households at Affordable Rent; or (iii) are currently occupied by Moderate Income Households at Affordable Rent; or (iv) are currently vacant and being held available for occupancy by a Very Low Income Household, a Lower Income Household or a Moderate Income Household and have been so held continuously since the date a Very Low Income Household, a Lower Income Household or a Moderate Income Household vacated such unit:

Occupied at an Affordable Rent by:

Very Low Income Households (50%) \_\_\_\_\_ # of Units, Nos.:
Lower Income Households (60%) \_\_\_\_\_ # of Units, Nos.:
Moderate Income Households (120%) \_\_\_\_\_ # of Units, Nos.:

Vacant:

a. Held for occupancy by:

i. Very Low Income Households (50%) \_\_\_\_\_ # of Units, Nos.:
ii. Lower Income Households (60%) \_\_\_\_\_ # of Units, Nos.:
iii. Moderate Income Households (120%) \_\_\_\_\_ # of Units, Nos.:

b. Last occupied by:

i. Very Low Income Households (50%) \_\_\_\_\_ # of Units, Nos.:
ii. Lower Income Households (60%) \_\_\_\_\_ # of Units, Nos.:
iii. Moderate Income Households (120%) \_\_\_\_\_ # of Units, Nos.:

3. At no time since the date of filing of the last Certification of Continuing Program Compliance have less than one hundred percent (100%) of the Required Affordable Units as completed units in the Development been occupied by, or been last occupied, or have been available for occupancy by Very Low Income Households, Lower Income Households or Moderate Income Households at an Affordable Rent.

4. The Participant is not in default under the terms of the Agreement, including without limitation the attachments thereto (such as CC&Rs, the Resale Restriction Agreement, the Senior Note, the Senior Deed of Trust, the Equity Share Note, the Equity Share Deed of Trust, the Capital Recovery Note and the Capital Recovery Deed of Trust).

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

**(PARTICIPANT)**

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



ATTACHMENT NO. 5  
CALCULATION OF AFFORDABLE RENTS

Riverside County  
Affordable Rent Worksheet

(2015 Income Figures)

1. Income Eligibility<sup>1</sup>

The first step in determining eligibility for an affordable housing program is determining whether the family which will be purchasing or renting the housing unit meets the following income standards applicable to **Riverside** County, based upon the size of the family:

<i>Income Level</i>	<i>1 person household</i>	<i>2 person household</i>	<i>3 person household</i>	<i>4 person household</i>	<i>5 person household</i>	<i>6 person household</i>	<i>7 person household</i>	<i>8 person household</i>
<i>Extremely Low</i>	\$14,100	\$16,100	\$20,090	\$24,250	\$28,410	\$32,570	\$36,730	\$40,890
<i>Very Low</i>	\$23,450	\$26,800	\$30,150	\$33,500	\$36,200	\$38,900	\$41,550	\$44,250
<i>Lower</i>	\$37,550	\$42,900	\$48,250	\$53,600	\$57,900	\$62,200	\$66,500	\$70,800
<i>Median</i>	\$45,500	\$52,000	\$58,500	\$65,000	\$70,200	\$75,400	\$80,600	\$85,800
<i>Moderate</i>	\$54,600	\$62,400	\$70,200	\$78,000	\$84,250	\$90,500	\$96,700	\$102,950

<sup>1</sup> Based on currently effective median income of San Bernardino-Riverside County, as released by the Department of Housing and Community Development (“HCD”) by memorandum dated as of April 15, 2015 as posted to the HCD website. These median income numbers are revised annually; accordingly, affordable rents are revised annually as well. The Participant is responsible for charging rents not in excess of those amounts allowable under the AHA or, if lower, those rents allowable under the HOME Program. The Participant is encouraged to annually confirm proposed rents with the City.

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

## 2. Determining Affordable Rent

For **rental housing**, the second step in determining compliance with affordable housing requirements is determining whether the total rent costs payable by the tenant are within allowable amounts. Notwithstanding the setting forth in this example of affordable rents, the definition of “Affordable Rents” set forth in the body of the Agreement shall control in the event of conflict. Specifically, the TCAC practice of determining affordable rents on the basis one and one-half (1 ½) persons per bedroom shall control (as against the convention of basing household size for the purposes of computing rent, and without regard to actual occupancy, on the basis of one person for each bedroom, plus one). However, in no event shall rents exceed Low HOME rents.

For **Extremely Low Income** Households:<sup>2</sup>

- purchasing a **0 bedroom** house, monthly housing payments may not exceed **\$341.25**
- purchasing a **1 bedroom** house, monthly housing payments may not exceed **\$390.00**
- purchasing a **2 bedroom** house, monthly housing payments may not exceed **\$438.75**
- purchasing a **3 bedroom** house, monthly housing payments may not exceed **\$487.50**
- purchasing a **4 bedroom** house, monthly housing payments may not exceed **\$526.50**
- purchasing a **5 bedroom** house, monthly housing payments may not exceed **\$565.50**

For **Very Low Income** Households:<sup>3</sup>

- purchasing a **0 bedroom** house, monthly housing payments may not exceed **\$568.75**
- purchasing a **1 bedroom** house, monthly housing payments may not exceed **\$650.00**
- purchasing a **2 bedroom** house, monthly housing payments may not exceed **\$731.25**
- purchasing a **3 bedroom** house, monthly housing payments may not exceed **\$812.50**
- purchasing a **4 bedroom** house, monthly housing payments may not exceed **\$877.50**
- purchasing a **5 bedroom** house, monthly housing payments may not exceed **\$942.50**

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<sup>2</sup> Affordable Housing Cost for Extremely Low Income Households is the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50052.5 (b)(1).

<sup>3</sup> Affordable Housing Cost for Very Low Income Households is the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50052.5 (b)(2).

For **Lower Income** Households:<sup>4</sup>

- renting a **0 bedroom** unit, monthly rent may not exceed **\$682.50**
- renting a **1 bedroom** unit, monthly rent may not exceed **\$780.00**
- renting a **2 bedroom** unit, monthly rent may not exceed **\$877.50**
- renting a **3 bedroom** unit, monthly rent may not exceed **\$975.00**
- renting a **4 bedroom** unit, monthly rent may not exceed **\$1,053.00**
- renting a **5 bedroom** unit, monthly rent may not exceed **\$1,131.00**

In addition, for any Lower Income Household whose income falls within the following guidelines, it is **optional** for the agency to require that **affordable rent not exceed 30 percent of the gross income of the household**.<sup>5</sup>

- **1 person households** whose income is between **\$27,300 and \$37,550**
- **2 person households** whose income is between **\$31,200 and \$42,900**
- **3 person households** whose income is between **\$35,100 and \$48,250**
- **4 person households** whose income is between **\$39,000 and \$53,600**
- **5 person households** whose income is between **\$42,120 and \$57,900**
- **6 person households** whose income is between **\$45,240 and \$62,200**
- **7 person households** whose income is between **\$48,360 and \$66,500**
- **8 person households** whose income is between **\$51,480 and \$70,800**

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<sup>4</sup> Affordable Rent for Lower Income Households is the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053 (b)(3).

<sup>5</sup> Health and Safety Code Section 50053 (b)(3).

For **Moderate Income** Households:<sup>6</sup>

- renting a **0 bedroom** unit, monthly rent may not exceed **\$1,251.25**
- renting a **1 bedroom** unit, monthly rent may not exceed **\$1,430.00**
- renting a **2 bedroom** unit, monthly rent may not exceed **\$1,608.75**
- renting a **3 bedroom** unit, monthly rent may not exceed **\$1,787.50**
- renting a **4 bedroom** unit, monthly rent may not exceed **\$1,930.50**
- renting a **5 bedroom** unit, monthly rent may not exceed **\$2,073.50**

In addition, for any Moderate Income Household whose income falls within the following guidelines, it is **optional** for the agency to require that **affordable rent not exceed 30 percent of the gross income of the household:**<sup>7</sup>

- **1 person households** whose income is between **\$50,050 and \$54,600**
- **2 person households** whose income is between **\$57,200 and \$62,400**
- **3 person households** whose income is between **\$64,350 and \$70,200**
- **4 person households** whose income is between **\$71,500 and \$78,000**
- **5 person households** whose income is between **\$77,220 and \$84,250**
- **6 person households** whose income is between **\$82,940 and \$90,500**
- **7 person households** whose income is between **\$88,660 and \$96,700**
- **8 person households** whose income is between **\$94,380 and \$102,950**

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<sup>6</sup> Affordable Rent for Moderate Income Households is the product of 30 percent times 110 percent of area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50053 (b)(4).

<sup>7</sup> Health and Safety Code Section 50053 (b) (4).

**For purposes of determining Affordable Rent, “Rent”** is an average of estimated housing costs for the next twelve months. **“Rent”** includes the total of monthly payments for all of the following:<sup>8</sup>

- Use and occupancy of a housing unit and land and facilities associated therewith.
- Any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
- A reasonable allowance for utilities not included in the above costs, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuels. Utilities does not include telephone service. Such an allowance shall take into consideration the cost of an adequate level of service.
- Possessory interest taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than the lessor.
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<sup>8</sup> 25 California Code of Regulations Section 6918.

## ATTACHMENT NO. 6

## SENIOR NOTE

\$177,000.00

Moreno Valley, California

\_\_\_\_\_ 1, 201\_

Property Address: 22889 Allies Place  
Moreno Valley, CA 92551

Maturity: July 1, 2046

**FOR VALUE RECEIVED**, the undersigned (“Maker”) promises to pay to the City of Moreno Valley (“Holder”) at 14177 Frederick Street, Moreno Valley, CA 92552, or at such other address as Holder may direct from time to time in writing, the sum of One Hundred Seventy-Seven Thousand Dollars (\$177,000.00) (the “Senior Note Amount”). All sums hereunder shall be payable in lawful money of the United States of America.

**1. Loan Agreement.** This Senior Note (the “Senior Note”) is made and delivered pursuant to and in implementation of the Affordable Housing Agreement entered by and between the Holder and the Maker dated as of September 22, 2015 (the “Agreement”), a copy of which is on file as a public record with the Holder. The Agreement is incorporated herein by this reference. The Maker acknowledges that but for the execution of this Senior Note, the Holder would not enter into the Agreement or make the loans contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

**2. Interest Rate.** The Senior Amount shall bear interest at the rate of zero percent (0%).

**3. Payments; Time of Payment.** Maker shall make monthly payments to Holder on the first day of each month commencing January 1, 2017, and continuing on the first day of each month thereafter in each Year to and including July 1, 2046 in the amount of Zero Dollars (\$0.00); provided that the entire balance under this Senior Note shall be due and payable in full on July 1, 2046.

**4. Acceleration.** The whole of the Senior Loan Amount shall, at the election of the City, become due and be immediately payable to the Holder by the Maker upon the occurrence of any of the following events: (a) the sale or transfer of the Site, including, without limitation, the lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (i) the rental of the Required Affordable Units at Affordable Rent to Low Income Households, or (ii) the transfer of the Site permitted by the Agreement and as to which the prior written approval of the City has been obtained. The failure by Holder to elect to accelerate upon the occurrence of an event within a particular time after the occurrence of such event shall not operate as a waiver of Holder’s right to accelerate and to declare all amounts due hereunder to be immediately payable.

**5. Security for Note.** This Senior Note shall be secured by a first deed of trust and rider thereto of even date herewith encumbering the Site (“Senior Deed of Trust”), executed by Maker, as trustor, in favor of Holder, as beneficiary.

**6. Prepayment of Note.** Maker may prepay this Note to Holder, provided that any prepayment must be in full and not in part. Prepayment shall not, however, release Maker from the requirements of CC&Rs, the Resale Restriction Agreement, the Equity Share Note, the Capital Recovery Note, or the other provisions of the Agreement. In addition, prepayment shall be treated in the same manner as a refinancing of the Site.

**7. Holder May Assign.** Holder may, at its option, assign its right to receive payment under this Senior Note without necessity of obtaining the consent of the Maker.

**8. Maker Assignment Prohibited.** In no event shall Maker assign or transfer any portion of this Senior Note, or its obligations as to the Senior Loan Amount and/or under the Agreement without the prior express written consent of the Holder.

**9. Joint and Several.** The undersigned, if more than one person, shall be jointly and severally liable hereunder.

**10. Attorneys’ Fees and Costs.** In the event that any action is instituted to enforce payment under this Senior Note, the parties agree the non-prevailing party shall be responsible for and shall pay to the prevailing party all court costs and all attorneys’ fees (based upon the rates customarily charged by the attorneys to private clients) incurred in enforcing this Senior Note.

**11. Amendments.** This Senior Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Senior Note so as to become a permanent part thereof.

**12. Maker’s Waivers.** Maker waives any rights to require the Holder to: (a) demand payment of amounts due (known as “presentment”), (b) give notice that amounts due have not been paid (known as “notice of dishonor”), and (c) obtain an official certification of nonpayment (known as “protest”).

**13. Notice.** Any notice that must be given to Maker under this Senior Note shall be given by personal delivery or by mailing it by certified mail addressed to Maker at the Property address above or such other address as Maker shall direct from time to time in writing. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment. Any notice to Holder shall be given by certified mail at the address stated above.

**14. Successors Bound.** This Senior Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.



IN WITNESS WHEREOF, Maker has executed this Senior Note as of the date set forth below.

**MAKER:**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**

a California nonprofit public benefit corporation

Dated: \_\_\_\_\_, 2015

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

Name: Bruce Kulpa

Title: Executive Director

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 7**  
**SCOPE OF WORK: BUDGET**

[to come]

Each Unit shall consist of not less than 600 square feet of living space (or, if greater, the size of each Unit as of the Date of Agreement. The work undertaken shall include, without limitation, full renovation of kitchens and bathrooms, including new cabinetry and counterparts, new drywall and texture throughout, including firewall as required; exterior improvements and such additional improvements and features as are described herein. Participant shall also be responsible for demolition, grubbing, and disposal as may be necessary.

**Riverside Housing Development Corporation**

**22889 Allies Place, Moreno Valley**



**INSTRUCTION SERVICES INC**

Date: 9/9/15

#	Discription	Cost	Notes
1	Plan Check & Inspection fees for rehab	\$0.00	Approved plans and reports will be part of the scope of work
2	Rehabilitation permit	\$0.00	
3	New Roof & Trusses Permit	\$0.00	
4	Laundry Room/Storage Room & Garage Construction Permit	\$0.00	
5	Relocate Electrical Panel permit	\$0.00	
6	Grading Permit	\$0.00	
7	Civil Engineer Fees	\$0.00	
8	Structural Engineer Fees	\$0.00	
9	Architectural Fees	\$0.00	
	<b>Demolition - Included but not limited to</b>		<b>Notes</b>
10	Remove trees, grass/shrubs & misc. landscape	\$2,735.00	
11	Remove concrete walkways	\$547.00	remove asphalt to property line to accommodate ADA lane of travel
12	Remove 42 x 22 asphalt Garage foot print & 2' out side footing	\$820.00	remove asphalt to property line to accommodate ADA lane of travel
13	Remove damaged wood siding & stucco as needed	\$1,094.00	
14	Remove front entry doors & hardware	\$438.00	
15	Remove existing light fixtures	\$109.00	
16	Remove flooring	\$219.00	
17	Remove all ceilings and walls through out each unit. Remove Ship Lap and Beams (lid)	\$5,469.00	
18	Remove all drywall (See Asbestos report for Protocol)	\$1,094.00	
19	Remove cabinets	\$1,094.00	
20	Remove plumbing fixtures	\$1,094.00	
21	Remove water and sewer lines/angle stops	\$219.00	
22	Remove water heater	\$438.00	
23	Remove wall a/c and heater equipment	\$219.00	
24	Remove sinks	\$219.00	
25	Remove countertops	\$328.00	
26	Remove garbage disposals	\$109.00	
27	Remove existing switches/plugs/plates	\$109.00	
28	Remove closet doors/shelving	\$219.00	
29	Remove existing flat roof & fascia	\$5,469.00	
30	Remove all existing plumbing lines in walls and existing electrical lines in walls	\$2,735.00	
31	Remove appliances	\$0.00	
32	Remove interior doors & hardware	\$438.00	
33	Remove existing laundry room equipment	\$273.00	
34	Remove all cables, wires and lines	\$109.00	
35	Remove existing fencing	\$328.00	
36	Haul off debris	\$875.00	
	<b>Grading</b>		<b>Notes</b>
37	Grade yards for proper drainage	\$547.00	
38	Install yard drains	\$547.00	
39	Grade for slab for Laundry/Storage & Garages	\$1,094.00	
	<b>Framing</b>		<b>Notes</b>
40	Frame laundry room/storage room & garages	\$6,016.00	
41	Revised interior, framing and door hardware for (4) units	\$15,200.00	
42	Convert flat roof to truss roof, install new fascia, 24" Eaves on trusses	\$8,204.00	
43	Frame in all door openings and window openings & attic access	\$875.00	Frame all units to accommodate ADA requirement per plan
44	Frame in HVAC closet in hallway at end of bedroom closet	\$273.00	
45	Install backing in wet areas to accommodate hardware	\$0.00	
46	Replace any damaged framing for backing to accommodate hardware and adaptable features	\$0.00	
47	Install new firewalls between units & in attics	\$656.00	
48	Frame out tub clean out access in bedroom closet	\$0.00	
49	Add Pop-Outs to front of building facing street - design to be determined	\$1,641.00	
50	Frame Closet in storage area for water heaters	\$438.00	
51	Termite Report & Mold Report Repairs	\$0.00	
52	Frame in window to accommodate (4 x 4 vinyl)	\$164.00	sill height 44in
53	Revised exterior, framing, garage height, path of travel, panic bars striker plates and notification pa	\$6,720.00	
54	Material Increase (Schedule Gap)	\$9,328.00	
	<b>Plumbing</b>		<b>Notes</b>
55	Replace all water lines from the meter in	\$8,883.00	Replacement fixtures shall meet current Green Code and Energy code
56	turned in	\$1,094.00	
57	Locate and raise all sewer clean outs	\$438.00	
58	Install new pressure regulators/ball valves	\$1,313.00	
59	Install new exterior hose bibs	\$0.00	
60	Install new angle stops/supply lines	\$0.00	
61	Replace all whole unit plumbing pipes in walls	1 \$5,807.00	R&R damaged sewer, drains lines and vent lines

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



62	Install new sinks	\$1,094.00	
63	Install new garbage disposals	\$656.00	
64	Install dishwasher hook-ups	\$0.00	
65	Install new p-traps	\$0.00	
66	Install new toilets & seats	\$1,094.00	
67	Install new water heaters insuring all are to code (50 gallon) 1 for tenants, 1 for laundry room	\$3,281.00	
68	Install new kitchen plumbing fixtures	\$656.00	
69	Install new bathroom plumbing fixtures (tub valves will now be on bedroom wall) with access panel	\$0.00	
70	Install new tub/shower trim includes valves & tub surround	\$4,157.00	
71	Cap any plumbing in wall at old laundry room	\$0.00	
72	Install new laundry hook-ups - 2 washer/dryer vented	\$0.00	
73	Replace old gas lines	\$3,281.00	
74	N/A	\$0.00	
	<b>Electrical</b>		Notes
75	Electrical system update with new wires to code, include new wiring for laundry, storage and garage	\$10,391.00	electrical fixtures, receptacles, and switches shall meet Energy code and
76	Install new switches, plugs and plates (switch in bathroom will turn on both light & fan at all times)	\$547.00	
77	Install new cable runs	\$0.00	
78	Install hardwired smoke detectors per code (includes 1 w/carbon monoxide detector in each unit)	\$656.00	
79	Ring out electrical system (R.N.I.)	\$0.00	
80	Install ceiling fan box with switch in each bedroom	\$0.00	
81	Install electrical for security lighting	\$0.00	
82	Test doorbells (R.N.I.)	\$0.00	
83	Install GFI's in kitchens/bathrooms/exteriors	\$350.00	
84	Install dedicated circuit for garbage disposal	\$0.00	
85	Install bathroom exhaust fans	\$438.00	
86	Install CAT 5 and pull all cable and telephone wires as necessary to smart box in bedroom	\$0.00	
87	Relocate electrical service panel	\$0.00	
88	Upgrade existing service panel	\$0.00	
89	Install house service panel	\$0.00	
90	Install anti arch breaker	\$0.00	
91	Install house meter	\$0.00	
92	Install electrical for irrigation	\$0.00	
93	Install door bells	\$0.00	
94	N/A	\$0.00	
95	N/A	\$0.00	
	<b>HVAC</b>		Notes
96	Install new 16 seer HVAC equipment in newly constructed hall closet	\$2,620.00	
97	Install new HVAC ducting	\$2,188.00	
98	Install new t-stats	\$0.00	
99	Install new HVAC registers	\$0.00	
100	Install new line sets	\$0.00	
101	Compressors to be placed on pad by bedroom window.	\$0.00	
102	N/A	\$0.00	
103	N/A	\$0.00	
	<b>HERS</b>		Notes
104	Test HVAC systems for Title 24 compliance	\$492.00	
105	N/A	\$0.00	
106	N/A	\$0.00	
	<b>Roofing</b>		Notes
107	Install new roofing and trusses, 24" Eaves on trusses, 24" on center	\$8,751.00	
108	Install new roofing on garage	\$3,281.00	
109	Radiant barrier in attic	\$0.00	
110	Install Solar powered Attic Fans	\$1,094.00	
111	Replace all existing roof vent screens, screens to match	\$438.00	
112	N/A	\$0.00	
113	N/A	\$0.00	
	<b>Doors</b>		Notes
114	Install new entry doors with one way peep hole at standard height, dead bolt length to be 1"	\$1,750.00	
115	Install new interior doors	\$1,531.00	
116	Install new bypass closet doors	\$1,094.00	
117	Install new laundry/storage/water heater room door (laundry room door to have window)	\$1,094.00	
118	Install attic access door	\$0.00	
119	N/A	\$0.00	
	<b>Insulation</b>		Notes
120	Install Insulation R42 in lids	\$1,969.00	
121	Install Insulation R19 in walls	\$3,828.00	
122	N/A	\$0.00	
123	N/A	\$0.00	
	<b>Moldings</b>		Notes
124	Install new door casing	\$1,313.00	
125	Install new baseboard and/or shoe	\$1,750.00	
126	N/A	\$0.00	
127	N/A	\$0.00	

128	N/A	\$0.00	Notes
<b>Windows</b>			
129	Install new dual pane windows with screens (4 x 4) (Low-E)	\$6,563.00	
130	All windows are to be sealed, locks & windows working correctly	\$0.00	
131	N/A	\$0.00	
132	N/A	\$0.00	Notes
<b>Drywall</b>			
133	Install new drywall and texture (light knockdown) - 1 hour Firewall	\$7,657.00	
134	Texture ceilings (light knockdown)	\$0.00	
135	Install Green Board In all wet areas	\$0.00	
136	N/A	\$0.00	Notes
<b>Stucco</b>			
137	Stucco existing building complete, include laundry/storage room & garages	\$8,204.00	
138	Add Pop Out foam details to exterior - design to be determined	\$0.00	
139	N/A	\$0.00	
140	N/A	\$0.00	
141	N/A	\$0.00	Notes
<b>Cabinetry</b>			
142	Install new cabinets in kitchens and bathrooms	\$21,330.00	
143	Install HVAC cabinet in hallway	\$0.00	
144	N/A	\$0.00	
145	N/A	\$0.00	Notes
<b>Paint</b>			
146	Paint interior of apartments and garage as per specs	\$3,281.00	
147	Hydro blast & scrape off all peeling or cracked paint on exterior	\$0.00	
148	Paint exterior of apartments and garage as per specs	\$2,735.00	
149	Paint trash enclosure gates	\$547.00	
150	Paint wrought iron	\$2,735.00	
151	Touch up painting after construction complete	\$0.00	
152	N/A	\$0.00	
153	N/A	\$0.00	
154	N/A	\$0.00	Notes
<b>Door Hardware - Bright Brass Finish</b>			
155	Install new interior door hardware (Bright Brass Finish)	\$656.00	
156	Install new entry door hardware	\$656.00	
157	Install new laundry / storage room hardware (keyed per Property Management Standard)	\$219.00	
158	All to be keyed per PROPERTY MANAGEMENT'S SPECS	\$0.00	
159	N/A	\$0.00	
160	N/A	\$0.00	Notes
<b>Bath Accessories</b>			
161	Install new towel bars/toilet paper holders	\$438.00	
162	Install new vanity mirrors	\$656.00	
163	Install new medicine cabinets	\$438.00	
164	Install shower rods	\$438.00	
165	N/A	\$0.00	
166	N/A	\$0.00	Notes
<b>Light Fixtures</b>			
167	Install new ceiling fans with light kits at bedrooms	\$1,313.00	
168	Install new ceiling fans with light kits at living rooms	\$656.00	
169	Install new security lights - match existing buildings	\$328.00	
170	Install new light at address numbers or lighted address signs	\$438.00	
171	Install new light bars at bathrooms	\$219.00	
172	Install new hall light fixtures	\$219.00	
173	Install exterior porch lights	\$328.00	
174	Install new fluorescent kitchen lights	\$656.00	
175	Install 4 can lights in kitchen area	\$1,750.00	
176	Install new fluorescent laundry room/storage room light fixture	\$219.00	
177	Install new laundry room/storage room light fixture	\$109.00	
179	N/A	\$0.00	
179	N/A	\$0.00	Notes
<b>Counter Tops</b>			
180	Install Formica Kitchen counter tops (white)	\$2,188.00	
181	Install Formica Bathroom counter tops	\$1,094.00	
182	Install new silestone kitchen counters - In lieu of Formica	\$10,938.00	
183	Install new silestone bathroom counters - In lieu of Formica	\$2,188.00	
184	N/A	\$0.00	
185	N/A	\$0.00	Notes
<b>Tub/Shower</b>			
186	Install new tubs - valves will now back to bedroom wall	\$3,500.00	
187	Install complete tub kit, including surround	\$2,188.00	
188	Caulk all joint areas, around base of tubs/toilets/surrounds	\$0.00	
189	N/A	\$0.00	
190	N/A	\$0.00	



			Notes
	<b>Flooring</b>		
191	Install new carpet - Manufacturer to be Mohawk (Shaw) in Bedroom only	\$1,969.00	
192	Bathroom	\$9,844.00	
193	Seal all tile	\$0.00	
194	N/A	\$0.00	
195	N/A	\$0.00	
196	N/A	\$0.00	
	<b>Window Coverings</b>		Notes
197	Install new vertical blinds (white)	\$1,094.00	
198	N/A	\$0.00	
199	N/A	\$0.00	
	<b>Garage Doors</b>		Notes
200	Install new roll-up garage doors	\$2,188.00	
201	Install garage door opener	\$1,313.00	
202	Install garage door opener manual release/key pad release - No manual release w/elect opener	\$656.00	
203	Provide 8 automatic garage door openers	\$0.00	
204	N/A	\$0.00	
	<b>Sheet Metal</b>		Notes
205	baked on enamel	\$2,406.00	
206	Install new vents for range hoods (vented to outside)	\$656.00	
207	N/A	\$0.00	
208	N/A	\$0.00	
	<b>Mailboxes</b>		Notes
209	Install mailboxes at left front (facing) unit - close to 22889 Allies	\$438.00	
210	N/A	\$0.00	
211	N/A	\$0.00	
	<b>Asphalt</b>		Notes
212	Install approx. 22 x 42 area for asphalt at garages	\$3,281.00	
213		\$0.00	
	<b>Concrete</b>		Notes
214	Pour new concrete walkway	\$2,625.00	Exterior walkways shall me accessibility requirements
215	Foundation for Laundry Rm/Storage Rm, Garage & parking area	\$4,375.00	
216		\$0.00	
	<b>Wood Fencing</b>		Notes
217	Install dogwood fence in front of units (48' x 2) each side	\$1,750.00	
218	N/A	\$0.00	
219	N/A	\$0.00	
	<b>Wrought Iron</b>		Notes
220	Install new wrought iron fencing with 4 man gates, look at 22898 Allies - match	\$12,032.00	
221	Install security cages over all irrigation valves and AC compressors	\$438.00	
222	Install Knox Boxes (2)	\$0.00	
223	Trash Enclosure Gates	\$1,531.00	Entry gates shall meet Accessibility requirements for maneuvering clearance, landing, hdwe, etc...
224	N/A	\$0.00	
	<b>Landscape</b>		Notes
225	Install elite tall fescue sod (approx. 20 x 20)	\$875.00	
226	2" layer of Mulch & weed barrier	\$219.00	
227	Brick Planter edge	\$656.00	
228	Flats of ground cover, 1 planter every 6' in open areas, every 3' in planters	\$219.00	
229	5-gallon roses 24 ea.	\$219.00	
230	15-gallon boxwoods 17 ea.	\$295.00	
231	Install 1x4 plastic header board between iron fence and boxwood planters entire project	\$219.00	
232	Install new irrigation system, Includes controller, lines, valves and sprinklers, use bubblers	\$1,351.00	
233	N/A	\$0.00	
234	N/A	\$0.00	
235	N/A	\$0.00	
	<b>Appliances</b>		Notes
236	Install new appliances (self-cleaning stove & Micro Hood)	\$6,228.00	
237	Install dishwasher	\$2,188.00	
238	N/A	\$0.00	
	<b>Fire Extinguishers</b>		Notes
239	Install Fire Extinguishers with locking cabinets	\$219.00	
240	N/A	\$0.00	
	<b>Masonry</b>		Notes
241	Build Trash Enclosure	\$12,220.00	
242	N/A	\$0.00	
	<b>Prep &amp; Clean</b>		Notes
243	Prep & Finish cleaning units	\$0.00	
244	N/A	\$0.00	
245	N/A	\$0.00	
246	P & O	\$0.00	
	<b>Sub-Total</b>	\$312,220.00	

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING





**ATTACHMENT NO. 8  
CERTIFICATE OF COMPLETION**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Empty rectangular box for recording details.

(Space Above for Recorder's Use Only)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

**CERTIFICATE OF COMPLETION**

**THIS CERTIFICATE OF COMPLETION** (the "Certificate") is made by the **CITY OF MORENO VALLEY**, a public body, corporate and politic (the "City"), in favor of **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation (the "Participant"), as of the date set forth below.

***RECITALS***

A. The City and the Participant have entered into that certain Affordable Housing Agreement (the "AHA") dated as of September 22, 2015 concerning the redevelopment of certain real property situated in the City of Moreno Valley, California, as more fully described in Exhibit "A" attached hereto and made a part hereof (the "Site").

B. As referenced in Section 4.13 of the AHA, the City is to furnish the Participant or its successors with a Certificate of Completion upon completion of construction of the "Improvements" (as defined in Section 1.1 of the AHA), which Certificate is required to be in such form as to permit it to be recorded in the Recorder's Office of Riverside County. This Certificate is conclusive determination of satisfactory completion of the construction and development required by the AHA.

C. City has conclusively determined that the construction and development of the Development has been satisfactorily completed.

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**NOW, THEREFORE**, City hereby certifies as follows:

- 1. City does hereby certify that the Improvements to be constructed by the Participant have been fully and satisfactorily completed in full conformance with the AHA.
- 2. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation of Participant to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance construction work on the Site, or any part thereof.
- 3. This Certificate shall not constitute evidence of Participant’s compliance with those covenants in the AHA that survive the issuance of this Certificate.
- 4. This Certificate is not a Notice of Completion as referred to in California Civil Code Section 3093.
- 5. Nothing contained in this instrument shall modify in any other way any other provisions of the AHA (including without limitation the attachments thereto).

**IN WITNESS WHEREOF**, City has executed this Certificate of Completion this \_\_\_ day of \_\_\_\_\_, 201\_\_.

**CITY OF MORENO VALLEY**, a public body,  
corporate and politic

By: \_\_\_\_\_  
City Manager

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT “A” TO ATTACHMENT NO. 8****LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 39 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-009

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 9**

**CC&RS**

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805  
Attn: City Manager

(Space above for Recorder's Use.)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

**REGULATORY AGREEMENT**

These Covenants, Conditions and Restrictions, herein sometimes referred to as these "CC&Rs" or "Declaration" or "Regulatory Agreement" are made by the signatories hereto.

**RECITALS**

**WHEREAS**, each of the **CITY OF MORENO VALLEY**, a municipal corporation ("City"), and **RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation ("Participant") is a party to this Declaration. The City and the Participant are sometimes collectively referred to herein as the "Declarants".

**WHEREAS**, the City and the Participant have entered into that certain unrecorded Affordable Housing Agreement dated as of September 22, 2015 (the "AHA") for the improvement and development of certain real property described in Exhibit "A" (to which these CC&Rs are attached) as the "Site," a legal description of which is attached hereto as Exhibit "A"), which AHA provides for the recordation of this Regulatory Agreement. The AHA is incorporated herein by this reference and any capitalized term not defined herein shall have the meaning established therefor in the AHA.

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**WHEREAS**, this Regulatory Agreement establishes a plan for the improvement, development and maintenance of the Site, for the benefit of the Project Area, as well as the rest of the City.

**WHEREAS**, City is the recipient of moneys from the federal government pursuant to the HOME Investment Partnerships Program (“HOME” or “HOME Program”) from the United States Department of Housing and Urban Development (“HUD”).

**WHEREAS**, City has determined to make certain moneys allocated to it under the HOME Program (“HOME Moneys”) available to Participant pursuant to the AHA, including the HOME Regulations and all provisions hereof.

**WHEREAS**, Participant has acquired from a private party (“Prior Owner”) of one four (4)-unit apartment building located at 22889 Allies Place in the City of Moreno Valley (the “Site”), as more particularly described in the Map (Attachment No. 1) and the Legal Description of the Site (Attachment No. 2.) as affixed to the AHA.

**WHEREAS**, under the AHA, City will acquire the Site, or reimburse Participant for the Site, provided that Participant executes and delivers to City those promissory notes, deeds of trusts, covenants and regulatory agreements as more particularly set forth herein. Participant shall thereupon acquire or reacquire an interest in the Site and shall thereupon renovate and rehabilitate the existing four (4) dwelling units on the Site, whereupon the Participant shall rent each of such four (4) dwelling units to “Low Income Households” at “Affordable Rent” as those terms are defined below. Such development is intended to implement the City’s affordable housing goals.

**WHEREAS**, all of the units at the Site shall be rented at “Affordable Rent” throughout the “Required Covenant Period” (as defined below). All of the undertakings of the Participant to rent the four (4) Units at the Site at Affordable Rent for Low Income Households are material to this Agreement and but for those undertakings by the Participant and the City would not have entered into the AHA.

**WHEREAS**, the AHA sets forth certain restrictive covenants applicable to the Site, particularly the use of the Site for the provision of rental housing units available to Low Income Households at Affordable Rents as those terms are defined therein.

**WHEREAS**, City and Participant wish to adopt this Regulatory Agreement to further govern the use of the Site in conjunction and along with the AHA and to ensure that the City provides an affordable housing resource that would conform to the provisions of Section 33413 of the California Health and Safety Code.

**NOW, THEREFORE**, the City and the Participant (the latter as owner of real property interests described hereinabove located within the corporate limits of the City), declare that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the Covenants, Conditions and Restrictions hereinafter set forth expressly and exclusively for the use and benefit of said property, and the City. Each and all of the restrictions, limitations, conditions, covenants, liens, reservations and charges herein contained shall run with the land and be recorded on the property title and shall be binding on Declarants, their grantees, successors, heirs, executors, administrators, devisees or assigns, and all subsequent owners of all or any part of the Site.

## ARTICLE I DEFINITIONS

The definitions provided herein shall be applicable to this Declaration and also to any amendment or supplemental Declaration (unless the context implicitly or explicitly shall prohibit), recorded against the Site pursuant to the provision of this Declaration.

Section 1. “Affordable Housing Project” means an affordable housing project operated in conformity with this Regulatory Agreement throughout the Required Covenant Period.

Section 2. “Affordable Rent” means an amount equal to the maximum amount of out of pocket housing cost to be charged monthly by Participant and paid by each of the eligible Very Low and Low Income Households for each of the Housing Units at the Project as determined and calculated pursuant to the affordable rent and the rent limitations as determined and published from time to time by TCAC; in the event TCAC ceases to function or to determine affordable rents, then such affordable rents shall be determined by the City Manager, acting on behalf of the City, in a manner substantially consistent with the method under which affordable rents were determined by TCAC. For purposes of Affordable Rent, the monthly housing payment means the total of monthly payments by each tenant household (inclusive of any and all payments attributable to Section 8 housing assistance, other rental subsidies, or other public subsidies, if any) of a Housing Unit for use and occupancy of a Housing Unit and facilities associated therewith, including a reasonable allowance for utilities for an adequate level of service.

Section 3. [Reserved].

Section 4 “Approved Housing Project” means all improvements as provided to be developed by Participant under the AHA. The Approved Housing Project must be completed in strict conformity with all specifications contained in or referred to in the AHA.

Section 5. “Area” means the Riverside-San Bernardino Primary Metropolitan Statistical Area, as periodically defined by HUD.

Section 6. [Reserved].

Section 7. [Reserved].

Section 8. “Calculation of Affordable Rents” means the worksheet substantially in the form of Attachment No. 5 to the AHA.

Section 9. “Certificate” or “Certification” is defined in Section 3 of Article II hereof.

Section 10. “City” means and refers to the City of Moreno Valley, a municipal corporation.

Section 11. “City Code” means and refers to the City of Moreno Valley Municipal Code as revised from time to time.

Section 12. “Common Areas” means all areas on the Site that are open or accessible to all tenants of the Site (such as grounds, but excluding buildings).



Section 13. “Gross Income” means all payments from all sources received by a person (together with the gross income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) whether in cash or in kind as calculated pursuant to the Department of Housing and Urban Development (“HUD”) Regulations (24 C.F.R. § 813) in effect as of the Date of Agreement.

Section 14. “HOME Program” means a program operated by the City to assist the provision of affordable housing in conformance with the HOME Regulations.

Section 15. “HOME Regulations” means those regulations set forth at 24 C.F.R., Part 92, as such regulations may be revised from time to time. The HOME Regulations shall, for purposes of this Agreement (including without limitation the attachments hereto) be deemed to include Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, as amended.

Section 16. “HOME Requirements” means limitations on household income and/or household size as established by the HOME Regulations.

Section 17. “HUD” means the United States Department of Housing and Urban Development.

Section 18. “Low Income Households” or “Lower Income Households” means Low Income Households whose Adjusted Income does not exceed eighty percent (80%) of Median Income for the Area as determined by the United States Department of Housing and Urban Development from time to time and as set forth in Health and Safety Code Section 50079.5.

Section 19. “Median Income for the Area” means the median income for the Area as most recently determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or, if programs under Section 8 are terminated, Median Income for the Area determined under the method used by the Secretary prior to such termination.

Section 20. “Regulatory Agreement” means this Regulatory Agreement and any amendments, modifications or supplements which may also be referred to herein as these “CC&Rs” or this “Declaration.”

Section 21. “Rental Project” means the four (4) unit residential rental development on the Site.

Section 22. “Required Affordable Unit” means a dwelling unit in the Rental Project, as rehabilitated or reconstructed under the AHA, and available to, occupied by, or held vacant for occupancy only by tenants qualifying as Very Low Income Households and, as applicable, Low Income Households and rented at Affordable Rent.

Section 23. “Required Covenant Period” means the period commencing on the date this Regulatory Agreement is recorded and ending as of July 1, 2071.

Section 24. “Rules and Regulations” means each of: (i) Health and Safety Code Sections 50052.5, 50053 and 50105; (ii) the Davis-Bacon Act (40 U.S.C. 3141 et seq.); (iii) Community Development Block Grant (CDBG) program as authorized under the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq. (“HCD Act”) and the regulations promulgated

thereunder at 24 C.F.R. 570; (iv) The Housing and Economic Recovery Act of 2008 (Public Law 110-289) (“HERA”); (v) The American Reinvestment and Recovery Act of 2009 (Public Law 111-005) (the “Recovery Act”); (vi) Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 [Docket No. FR 5321-N-01] (the “NSP2 NOFA”); (vii) the Community Development Block Grant (CDBG) program as authorized under the Public Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq. (“HCD Act”) as amplified by regulations set forth at 24 C.F.R. 570; (viii) the Housing and Economic Recovery Act of 2008 (Public Law 110-289) (“HERA”); (ix) the American Reinvestment and Recovery Act of 2009 (Public Law 111-005) (the “Recovery Act”); (x) the Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009 [Docket No. FR 5321-N-01] (the “NSP2 NOFA”); (xi) the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 C.F.R. Part 58; (xii) City’s Final Neighborhood Stabilization Program as amended by Substantial Amendment to the City of Moreno Valley’s 2008-2009 Annual Action Plan, as adopted November 25, 2008; (xiii) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010), including regulations cited at 75 FR 64322 (“NSP3”); (xiv) the Notice of Funding Availability (NOFA) for NSP3 (the “NSP3 NOFA”); (xv) the Flood Disaster Protection Act of 1973 (P.L. 93-2234) for compliance in regard to the sale, lease, or other transfer of land acquired, cleared or improved under the terms of this Agreement; (xvi) the Clean Air Act, as amended (42 U.S.C. 1857, et seq.); (xvii) the Water Pollution Control Act, as amended, 33 U.S.C. 1251, et. seq., as amended 1318 relating to the inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; (xviii) the Environmental Protection Agency Regulations pursuant to 40 C.F.R., Part 50, as amended; (xix) Labor Standards (29 CFR Parts 3.5 and 5a) pertaining to contracts and applicable requirements of the regulations of the Division of Labor; (xx) the Drug Free Workplace Act of 1988; (xxi) Public Law 101-144, Section 519 (the 1990 HUD Appropriation Act); (xxii) the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470); (xxiii) federal regulations requiring that minority and women’s businesses be afforded opportunities to participate in the performance of this Agreement; (xxiv) as to conflicts of interest: (a) Participant agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following: (1) Participant shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds; (2) no employee, officer or agent of Participant shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved; (3) no covered persons who exercise or have exercised any functions or responsibilities with respect to NSP-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the NSP-assisted activity, or with respect to the proceeds from the NSP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of City, Participant, or any designated public agency; (xxv) Participant shall comply with federal regulations concerning lobbying; (xxvi) 42 U.S.C. Section 5309 (nondiscrimination); and (xxvii) to the extent applicable, including a Section 3 Clause in each construction contract.

Section 25. “Site” means all of the real property and appurtenances as described above, including all structures and other improvements thereon, and those hereafter constructed.

Section 26. “TCAC” means the California Tax Credit Allocation Committee, the allocating agency for Tax Credits in California.

Section 27. “Tax Credits” means federal 9% Low Income Housing Tax Credits granted pursuant to Section 42 of the Internal Revenue Code and/or California Revenue and Taxation Code Sections 17057.5, 17058, 23610.4 and 23610.5 and California Health and Safety Code Section 50199, et seq.

Section 28. “Unit” means a dwelling unit on the Rental Project.

Section 29. “Very Low Income Households” means Very Low Income Households whose Adjusted Income does not exceed fifty percent (50%) of Median Income for the Area as determined by the United States Department of Housing and Urban Development from time to time and as set forth in Health and Safety Code Section 50105.

## **ARTICLE II** **LAND USE RESTRICTIONS; IMPROVEMENTS**

Section 1. Uses. The Participant shall develop the Approved Housing Project on the Site in conformity with the AHA. Thereafter, the Site shall be operated as an Affordable Housing Project and devoted only to the uses specified in the AHA for the periods of time specified herein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Participant pursuant to the AHA, shall conform to all applicable provisions of the Moreno Valley Municipal Code, the City Approvals, the Rules and Regulations, and the HOME Regulations.

The Site shall be used, maintained and operated in accordance with the AHA and this Regulatory Agreement for the Required Covenant Period. None of the units in the Rental Project shall at any time be utilized on a transient basis nor shall the Rental Project or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer court or park. No part of the Site, from the date the Participant acquired the Site, has been or will at any time be owned or used as a cooperative housing corporation or a community apartment project or a stock cooperative.

Section 2. Affordable Housing.

*Number of Units.* Throughout the Required Covenant Period, not less than four (4) of the Units shall be rented at Affordable Rent to Low Income Households. Required Affordable Units shall be continuously occupied by or held available for occupancy by Very Low Income Households (as to one Unit) and Low Income Households (as to three Units), at an Affordable Rent. All Affordable Units shall be rented at Affordable Rent. For this purpose, a tenant who qualifies as a Very Low Income Household at the time he or she first occupies an Affordable Unit shall be deemed to continue to be so qualified until such time as a recertification of such individual’s or family’s income in accordance with Section 3 below demonstrates that such individual or family no longer qualifies as a Very Low Income Household. Moreover, a unit previously occupied by a Very Low Income Household, and then vacated shall be considered occupied by such Very Low Income Household until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed thirty-one (31) days. The same protocol shall be followed as to Low Income Households.

At such time as a tenant ceases to qualify as a Very Low Income Household, the unit occupied by such tenant shall cease to be a Very Low Income Unit. The Participant shall replace each such Very Low Income Unit by designating the next available unit and any necessary units thereafter as a Very Low Income Unit. For purposes of this Agreement, such designated unit will be considered a Very Low Income Unit if it is held vacant and available for occupancy by a Very Low Income Household, and, upon occupancy, the income eligibility of the tenant as a Very Low Income Household is verified and the unit is rented at Affordable Rent. The same protocol shall be followed as to Low Income Households.

In the event a household's income initially complies with the income restriction for a Very Low Income Household or a Low Income Household but the income of such household increases, such increase shall not be deemed to result in a violation of the restrictions of this Regulatory Agreement concerning limitations upon income of occupants, provided that the occupancy by such household is for a reasonable time of not to exceed one year (measured from the time the income of the household ceases to qualify at such affordability level). To the greatest extent allowable by law, at such time(s) as a household's income ceases to qualify, the rent for the corresponding unit for such tenant shall be modified to equal market rent as established in good faith by the Participant (with the rent to revert to affordable rent for the next conforming occupant). The Participant shall include in its rental agreements provisions which implement these requirements and limitations, and the Participant shall expressly inform prospective renters as to these provisions prior to the commencement of a tenancy.

*Duration of Affordability Requirements.* The Required Affordable Units shall be available to and occupied by Very Low Income Households and Low Income Households at Affordable Rent, as more particularly set forth herein, throughout the Required Covenant Period. All tenants residing in the Affordable Units during the last two (2) years of the Required Covenant Period shall be given notice by the Participant at least once every six (6) months prior to the expiration date of this requirement, that the rent payable on the Affordable Unit may be raised to a market rate rent at the end of the Required Covenant Period.

*Selection of Tenants.* As specified hereinbelow, Participant shall demonstrate to the City that the proposed tenants of each of the Required Affordable Units constitutes a Very Low Income Household or a Low Income Household in conformity with the provisions hereof.

Prior to the rental or lease of an Required Affordable Unit to a tenant, and as set forth in this Section 2 of Article II of this Declaration, the Participant shall require the tenant to execute a written lease and to complete an Income Verification certifying that the tenant(s) occupying the Required Affordable Unit is/are a Very Low Income Household or a Low Income Household and meet(s) the eligibility requirements established for the Required Affordable Unit. The Participant shall verify the income of the tenant(s).

The Participant shall accept as tenants on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor. The Participant shall not apply selection criteria to Section 8 certificate holders which are more burdensome than criteria applied to any other prospective tenants.

*Determination of Affordable Rent for the Affordable Units.* The Affordable Units shall be rented or leased at Affordable Rent. Affordable Rent shall be determined as those rents applied by

TCAC for projects for which Tax Credits are awarded (without regard to the absence of Tax Credits for this Project).

THE PARTICIPANT UNDERSTANDS AND KNOWINGLY AGREES THAT THE MAXIMUM RENTAL FOR THE AFFORDABLE UNITS ESTABLISHED BY THE AHA AND THIS REGULATORY AGREEMENT IS SUBSTANTIALLY BELOW THE FAIR MARKET RENT FOR THE AFFORDABLE UNITS.

Section 3. Participant Verification, Program Compliance, Annual Reports.

*Income Verification and Certification.* The Participant will obtain and maintain on file an Income Verification from each tenant, dated immediately prior to the initial occupancy of such tenant in the Rental Project.

On March 1, 2017 and annually thereafter, the Participant shall file with each of the City or its designee a Certificate, containing all information described at Health and Safety Code Section 33418, in a form prescribed by the City. Each Certificate shall cover the immediately preceding fiscal year.

In addition, commencing as of March 1, 2017, and continuing on each March 1 thereafter until July 1, 2071, the Participant shall submit an Audited Financial Statement for the previous Year (or portion thereof), including all funds from whatever source provided to the Participant or any Related Entity in connection with the Development. The Audited Financial Statement shall demonstrate ongoing compliance with this Regulatory Agreement, including without limitation Section 5.2.2 hereof.

The Participant shall maintain on file each tenant's executed lease and Income Verification and rental records for the Development and the Housing Units. The Participant shall maintain complete and accurate records pertaining to the Low Income Units and will permit any duly authorized representative of the City to inspect the books and records of the Participant pertaining to the Development, including those records pertaining to the occupancy of the Units. The Participant shall prepare and submit to the City annually commencing March 1, 2017 and continuing throughout each Year until and including June 1, 2069, a Certificate of Continuing Program Compliance. Such documentation shall state for each unit in the Development the unit size, the rental amount, the number of occupants, and the income of the occupants and any other information which may be used to determine compliance with the terms of this Regulatory Agreement and the AHA.

As part of its annual report, the Participant shall include a statement of amounts payable by Participant under this Regulatory Agreement supported by an Audited Financial Statement (prepared by an independent accounting firm reasonably acceptable to the City) which sets forth information in detail sufficient for adequate review by the City for the purposes of confirming those amounts payable by the Participant to the City as well as showing the general financial performance of the Development ("Annual Financial Report"). Each Annual Financial Report shall include a profit and loss statement showing Gross Revenues, Operating Expenses, Debt Services, Operating Reserve, Capital Replacement Reserve, Chargeable Fees (and all components thereof), and Residual Receipts, all certified by the Audited Financial Statement. In the event the amounts reported or paid deviate by five percent (5%) or more from that amount owing upon review of the Participant's submittal, Participant shall reimburse City for its cost to review (which may require engagement of auditors) and collect the amounts owing.



*Reporting Amounts.* City intends to utilize as a standard for the collection of information from the Participant that information described at Section 33418 of the California Health and Safety Code in connection with the monitoring of Affordable Units by Participant to and the submitting of annual reports required by Section 3 of Article II of this Declaration. City relies upon such reports in connection with the HOME Regulations. In the event the Participant fails to submit to the City or its designee the Certification as required by this Section 3, the Participant shall be in noncompliance with this Regulatory Agreement. In the event the Participant remains in noncompliance for thirty (30) days following receipt of written notice from the City of such noncompliance, then the Participant shall, without further notice or opportunity to cure, pay to the City Two Hundred Fifty Dollars (\$250.00) per Required Affordable Unit for each year Participant fails to submit a Certificate covering each and every housing unit on the Site. The foregoing portion of this paragraph shall not limit other remedies of the City.

Section 4. Nondiscrimination. The Participant shall refrain from restricting the rental, sale or lease of the Site, or any portion thereof, on the basis of race, color, creed, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

(2) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased. The foregoing covenants shall run with the land.”

(3) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises subject to this

agreement nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises. The foregoing covenants shall run with the land.”

The covenants established in this Declaration and the deeds of conveyance for the Site shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City and any successor in interest to the Site, together with any property acquired by the Participant pursuant to this Agreement, or any part thereof. The covenants against discrimination as set forth in this Section 4 of Article II shall remain in effect in perpetuity.

Section 5. Keeping of Animals. No animals of any kind shall be raised, bred or kept on the Site, except that domesticated dogs, cats or other household pets may be kept by the tenants in the Rental Project at the discretion of Participant and subject to compliance with all laws. However, no animal shall be kept, bred or maintained for any commercial purpose or for fighting purposes. Nothing permitted herein shall derogate in any way the right of the Participant to further restrict keeping of pets.

Section 6. Parking of Vehicles. The Participant shall not permit the parking, storing or keeping of any vehicle except wholly within the parking areas designated for the Required Affordable Units. The Participant shall not permit the parking, storing or keeping of any large commercial type vehicle (dump truck, cement mixer truck, oil or gas truck, etc.), or any recreational vehicle over twenty (20) feet in length (camper unit, motor home, trailer, mobile home or other similar vehicle), boats over twenty (20) feet in length, or any vehicle other than a private passenger vehicle, upon any portion of the Common Areas, including parking spaces. For purposes of this section, a pickup truck with a pickup bed mounted camper shall be considered a private passenger vehicle; provided however, that no such vehicle shall be used for residential purposes while parked on the premises.

The Participant shall not permit major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle to be conducted upon any portion of the Common Area, including the parking areas, except for emergency repairs thereto and then only to the extent necessary to enable movement of the vehicle to a proper repair facility. No inoperable vehicle shall be stored or kept in the Common Area. The Participant shall give the vehicle owner not less than four (4) days, nor more than seven (7) days’ notice and an opportunity to remove any vehicle parked, stored or kept in violation of the provisions of this Declaration. Notice shall consist minimally of a reasonably diligent attempt to personally notify the vehicle owner or alternatively leaving written notice on the subject vehicle. After due notice and opportunity have been given to the vehicle owner, the Participant shall have the right to remove, at the vehicle owner’s expense, any vehicle parked, stored or kept in violation of the provisions of this Declaration.

Section 7. Maximum Occupancies. No persons shall be permitted to occupy any Unit within the Rental Project in excess of applicable limit of maximum occupancy set by the Moreno Valley Municipal Code and the laws of the State of California.

Section 8. Signs Required. “No loitering” signs will be posted at each building and enforced by the owner(s). “Illegally parked vehicles will be towed” signs in compliance with California Vehicle Code requirements will be posted and enforced by the Participant.



Section 9. Fences and Electronic Installations. The Participant shall not install or knowingly permit to be installed on the exterior of any improvement or building on any fences or any antenna or other television or radio receiving device, excepting satellite dishes having a diameter of eighteen inches (18”) or less, without prior written consent of City. This prohibition shall not prohibit the installation of cable television or subscription wires or receiving devices.

Section 10. Structural Change. Nothing shall be done on the Site in, on or to any building which would structurally change the exterior or the interior bearing walls of any such building or structure, except as otherwise provided herein. Nothing herein shall affect the rights of the Participant to repair, alter or construct improvements on the buildings on the Site unless such repair, alteration or improvement would impair the structural integrity and/or exterior appearance of said buildings. Nothing herein shall be deemed to prohibit work ordered to be performed by the City building official.

Section 11. Compliance with Laws. The Participant shall comply with all applicable laws in connection with the development and use of the Site, including without limitation the California Community Redevelopment Law (Health and Safety Code section 33000, *et seq.*) and Fair Housing Act (42 U.S.C. § 3601, *et seq.*, and 24 C.F.R. § 100.300, *et seq.*) and the Rules and Regulations. The Participant is a sophisticated party, with substantial experience in the acquisition, development, financing, obtaining financing for, marketing, and operation of affordable housing projects, and with the negotiation, review, and preparation of agreements and other documents in connection with such activities. The Participant is familiar with and has reviewed all laws and regulations pertaining to the acquisition, development and operation of the Rental Project and has obtained advice from any advisers of its own choosing in connection with this Agreement.

### ARTICLE III

#### DUTIES OF PARTICIPANT: SPECIFIC MAINTENANCE RESPONSIBILITIES

Section 1. Exterior Building Maintenance. All exterior, painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. Any such defacing marks shall be cleaned or removed within a reasonable period of time as set forth herein.

Section 2. Front and Side Exteriors. The Participant shall at all times maintain the front exterior and yard in a clean, safe and presentable manner, free from defacing marks or any disrepair and any visible side exteriors. The Participant shall hire maintenance personnel to maintain and/or repair any front exterior or yard or visible side yard and exterior of any lot or building.

Section 3. Graffiti Removal. All graffiti, and defacement of any type, including marks, words and pictures must be removed and any necessary painting or repair completed by the later to occur of (i) seventy-two (72) hours of their creation or (ii) seventy-two (72) hours after notice to Participant.

Section 4. Driveways. All driveways must be paved and maintained with impervious material in accordance with the Moreno Valley Municipal Code. In addition, all water must be made to drain freely to the public part of the waterway without any pooling.

Section 5. Exterior Illumination. The Participant shall at all times maintain adequate lighting in all entrance ways, garages and parking areas. Adequate lighting means outdoor, night

lighting designed and installed, which provides no less than one (1.0) foot candles in the parking areas and no less than one and one-half (1-1/2) foot candles in the walking areas or common areas and no less than 0.2 foot candles at the point of least illumination.

Section 6. Front Setbacks. All front setback areas that are not buildings, driveways or walkways shall be adequately and appropriately landscaped in accordance with minimum standards established by the City and shall be maintained by the Participant. The landscaping shall meet minimum standards set from time to time by the City.

Section 7. Trash Bins. All trash shall be collected and placed at all times in an enclosable bin to be placed in a designated refuse/trash bin area. The designated area shall be located so that the bin will, to the extent possible, be readily accessible from the street.

Section 8. Prohibited Signs. No exterior sign of any kind shall be displayed to the public view on or from any portion of the Site without the approval of the City and appropriate City departments if any as required by the City Code.

Section 9. Duty to Prevent Hazardous Material Contamination. During the renovation and operation of the Development, Participant shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the Development. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. Participant shall notify the City, and provide to the City a copy or copies, of any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Participant shall report to the City, as soon as possible after each incident, any unusual, potentially important incidents in the event of a release of any Hazardous Materials into the environment.

For purposes of this Section, “Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City, or any other political subdivision in which the Development is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Participant or the Development.

For purposes of this Section, “Hazardous Materials” or “Hazardous Materials” means and include any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls, (ix)

designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903); (xi) Methyl tert Butyl Ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, et seq., specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities below attainment levels identified in one or more of the enactments identified above as Governmental Requirements, including those product and amounts as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Development, including without limitation alcohol, aspirin, tobacco and saccharine.

Section 10. Compliance With Laws. Participant shall carry out the design, development and operation of the Development in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Moreno Valley Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

Section 11. Exterior Building Maintenance. All exterior, painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. Any such defacing marks shall be cleaned or removed within a reasonable period of time as set forth herein.

#### **ARTICLE IV** **OBLIGATION TO MAINTAIN, REPAIR AND REBUILD; OBLIGATION** **TO MAINTAIN RESERVES**

Section 1. Maintenance by Participant. The Participant shall, at its sole cost and expense, maintain and repair the Site and the improvements thereon keeping the same in a decent, safe and sanitary manner, in accordance with all applicable Municipal Code Provisions, the United States Department of Housing and Urban Development (“HUD”) Housing Quality Standards (“HQS”), and in good condition and making all repairs as they may be required by this Regulatory Agreement and by all applicable Municipal Code and Uniform Code provisions. The Participant shall also maintain the landscaping required to be planted in a healthy condition. If, at any time, Participant fails to maintain the Rental Project or any portion thereof in conformance with this Section or Article III, and said condition is not corrected after the expiration of forty-five (45) days from the date of written notice from the City, the City may perform the necessary maintenance and

Participant shall pay such costs as are reasonably incurred for such maintenance. Payment shall be due within fifteen (15) days of receipt of an invoice from the City.

Section 2. Damage and Destruction Affecting Project - Participant's Duty to Rebuild. If all or any portion of the Site and the improvements thereon is damaged or destroyed by fire or other casualty, it shall be the duty of the Participant to rebuild, repair or reconstruct said portion of the Site and/or the improvements in a timely manner which will restore it to Code compliance condition.

In furtherance of the requirements of this Section 2, Participant shall keep the construction on the Site insured by carriers at all times satisfactory to City against loss by fire and such other hazards, casualties, liabilities and contingencies as included within an all risk extended coverage hazard insurance policy, in an amount of the full replacement cost of the constructions. In the event of loss, Participant shall give prompt notice to the insurance carrier and to the City.

If the Site is abandoned by the Participant, or if Participant fails to respond to City within thirty (30) days from the date notice is mailed by City to Participant that the insurance carrier offers to settle a claim for insurance benefits, City is authorized to collect and apply the insurance proceeds at City's option either to restoration or repair of the Site.

Section 3. Variance in Exterior Appearance and Design. In the event the Rental Project sustains substantial physical damage due to a casualty event, the Participant may apply to the City of Moreno Valley for approval to reconstruct, rebuild or repair in a manner which will provide different exterior appearance and lot design from that which existed prior to the date of the casualty.

Section 4. Time Limitation. Upon damage to the Site or the Rental Project or other improvements, the Participant shall be obligated to proceed with all due diligence hereunder and commence reconstruction within two (2) months after the damage occurs and complete reconstruction within six (6) months after damage occurs or demolition and vacate within two (2) months, unless prevented by causes beyond their reasonable control, in which event reconstruction shall be commenced at the earliest feasible time.

Section 5. Maintenance of Reserves. Participant shall set aside, or cause the permanent lender to, commencing as of the first month following the first anniversary of the completion of the first Housing Unit (as such completion is evidenced by the issuance of a certificate of occupancy by the City as to the corresponding building) set aside the Capital Replacement Reserve. A Capital Replacement Reserve shall be established by the Participant as a capital reserve in the amount of One Thousand Dollars (\$1,000.00) per Year (for the first Year), which shall remain fixed for the first five Years and then shall increase by fifty dollars (\$50.00) per unit annually, to a maximum of Five Hundred Dollars (\$500.00) per unit annually. The Capital Replacement Reserve is more fully described in Section 3.3 of this Agreement. The Capital Replacement Reserve shall be deposited into a separate interest-bearing trust account. Funds in the Capital Replacement Reserve shall be used for capital replacements to the Improvements' fixtures and equipment which are normally capitalized under generally accepted accounting principles. As capital repairs and improvements of the Development become necessary, the Capital Replacement Reserve shall be the first source of payment therefor; provided, however, that Participant may first use other funds for payment with the prior consent of City Manager, which approval shall not be unreasonably withheld. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Participant of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site in the manner prescribed in this Section 5 and the AHA. Participant, at its expense,

shall submit to City on not less than an annual basis an accounting for the Capital Replacement Reserve. Any moneys in the Capital Replacement Reserve which are not expended as of June 1, 2067 shall be applied toward the obligations of Participant to City under the AHA, including the attachments thereto.

Capital repairs to and replacement of the Improvements shall include only those items with a long useful life, including without limitation the following:

- (a) Appliance replacement;
- (b) Hot water heater replacement;
- (c) Plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets;
- (d) Air conditioning and heating replacement;
- (e) Asphalt replacement;
- (f) Roofing replacement;
- (g) Landscape tree replacement and irrigation pipe and controls replacement;
- (h) Gas line pipe replacement;
- (i) Lighting fixture replacement; and
- (j) Miscellaneous motors and blowers.

## **ARTICLE V** **ENFORCEMENT**

**Section 1.** **Remedies.** Breach of the covenants contained in the Declaration may be enjoined, abated or remedied by appropriate legal proceeding by the City.

This Declaration does not in any way infringe on the right or duties of the City of Moreno Valley to enforce any of the provisions of the Moreno Valley Municipal Code including, but not limited to, the abatement of dangerous buildings.

**Section 2.** **Nuisance.** The result of every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowable at law or equity, against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any owner or its successors in interest, without derogation of the City's rights under law.

**Section 3.** **Right of Entry.** In addition to the above general rights of enforcement, the City shall have the right through its agents and employees, to enter upon any part of the project area for the purpose of enforcing the California Vehicle Code, and the ordinances and other regulations of the City, and for maintenance and/or repair of any or all publicly owned utilities. In addition, the City has the right of entry at reasonable hours and upon and after reasonable attempts to contact



Participant, on any lot to effect emergency repairs or maintenance which the Participant has failed to perform. Subsequent to sixty (60) days written notice to the Participant specifically outlining the Participant's noncompliance, the City shall have the right of entry on the Site at reasonable hours to enforce compliance with this Declaration which the Participant has failed to perform.

Section 4. Costs of Repair. The costs borne by the City of any such repairs or maintenance emergency and/or non-emergency, shall become a charge for which Participant shall be responsible.

Section 5. Cumulative Remedies. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

Section 6. Failure to Enforce. The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

Section 7. Enforcement and Nonliability. The City may from time to time make such efforts, if any, as it shall deem appropriate enforce and/or assist in enforcing this Declaration. However, the City will not be subject to any liability for failure to affirmatively enforce any provision of this Declaration.

## **ARTICLE VI** **GENERAL PROVISIONS**

Section 1. Covenant Against Partition. By acceptance of its interest in the Site, the Participant shall be deemed to covenant for itself and for its heirs, representatives, successors and assigns, that it will not institute legal proceedings or otherwise seek to effect partition of its right and interest in the interest being conveyed to the Participant, or the burdens running with the land as a result of this Regulatory Agreement.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in all force and effect.

Section 3. Term. This Declaration shall run with and bind the interest of the Participant in the Site, and shall inure to the owner(s) of any property subject to this Declaration, his legal representatives, heirs, successors and assigns, and as provided in Article VI, Sections 2 and 3, be enforceable by the City, for a term equal to the Required Covenant Period as defined in the AHA, provided; however, that the covenants regarding nondiscrimination set forth in Section 4 of Article II of this Declaration shall remain in effect for perpetuity.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of rental housing available at Affordable Rent for Low Income Households and in light of the circumstance that approximately one hundred percent (100%) of the equity and one hundred percent (100%) of the total funding to acquire the Site and provide for the initial improvement to the Units thereon has been provided by the City. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

The Participant shall be obligated by this Declaration to comply with the provisions hereof, as well as the AHA (including with limitation the attachments thereto). In the event of conflict, the Participant shall comply with the most stringent requirements, in each case.

Section 5. Amendments. This Declaration may be amended only by the written agreement of the Participant and the City.

Section 6. Encroachments. None of the rights and obligations of the Participant created herein shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of Participant if said encroachment occurs due to the willful conduct of said Participant.

Section 7. Notices. Any notice permitted or required to be delivered as provided herein to Participant shall be in writing and may be delivered either personally or by certified mail. Notice to the City shall be made by certified mail to the City Manager or his designee at 14177 Frederick Street, Moreno Valley, California 92552-0805 (with a copy to Stradling Yocca Carlson & Rauth, Attention: Mark J. Huebsch, 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660), and shall be effective upon receipt. Notice to Participant shall be made by certified mail to Riverside Housing Development Corporation, a California nonprofit public benefit corporation, 3985 University Avenue, Riverside, California 92501, and shall be effective upon receipt. Such address may be changed from time to time by notice in writing.

**CITY OF MORENO VALLEY,**  
a municipal corporation

By: \_\_\_\_\_  
City Manager

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



**EXHIBIT A**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 39 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-009

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

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**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

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 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

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- Individual
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- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 10  
INCOME VERIFICATION**

Part I -- General Information

- 1. Project Location: \_\_\_\_\_
- 2. Landlord's Name: \_\_\_\_\_

Part II -- Unit Information

- |                |                       |                 |                        |
|----------------|-----------------------|-----------------|------------------------|
| 3. Unit Number | 4. Number of Bedrooms | 5. Monthly Rent | 6. Number of Occupants |
|----------------|-----------------------|-----------------|------------------------|

Part III -- Affidavit of Tenant

I, \_\_\_\_\_, and I, \_\_\_\_\_, as applicants for rental of an apartment Unit at the above-described location, do hereby represent and warrant as follows:

A. (My/Our) gross income (anticipated total annual income) **does not exceed fifty percent (50%)** of the median income for the Riverside-San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$\_\_\_\_\_. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

\_\_\_\_\_  
Tenant(s)' Initials

B. (My/Our) gross income (anticipated total annual income) exceeds fifty percent (50%) but **does not exceed eighty percent (80%)** of the median income for the Riverside-San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$\_\_\_\_\_. The following computation includes all income (I/we) anticipate receiving for the 12 month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

\_\_\_\_\_  
Tenant(s)' Initials

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

C. (My/Our) gross income (anticipated total annual income) exceeds eighty percent (80%) but **does not exceed one hundred twenty percent (120%)** of the median income for the Riverside-San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$\_\_\_\_\_. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

\_\_\_\_\_  
 Tenant(s)' Initials

D. (My/Our) gross income (anticipated total annual income) **exceeds one hundred twenty (120%)** of the median income for the Riverside-San Bernardino Primary Metropolitan Statistical Area as such income levels are established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937 and published by the State Department of Housing and Community Development in the California Code of Regulations. (I/We) understand that the applicable median income is \$\_\_\_\_\_. The following computation includes all income (I/we) anticipate receiving for the 12-month period beginning on the date (I/we) execute a rental agreement for an Affordable Unit or the date on which (I/we) will initially occupy such unit, whichever is earlier.

\_\_\_\_\_  
 Tenant(s)' Initials

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

1. Tenants qualifying as A and B, above, must complete the following:

<b>Monthly Gross Income</b> <b>(All Sources of Income of All Adult Household Members Must be Listed)</b>			
Source	Head of Household	Co-Tenants	Total
Gross amount, before payroll deductions of wages, salaries, overtime pay, commissions, fees, tips and bonuses			
Interest and/or dividends			
Net income from business or from rental property			
Social security, annuities, insurance policies, pension/retirement funds, disability or death benefits received periodically			
Payment in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay			
Alimony, child support, other periodic allowances			
Public assistance, welfare payments			
Regular pay, special pay and allowances of members of Armed Forces			
Other			
			Total: _____

Total x 12 \_\_\_\_\_ = Gross Annual Household Income

Note: The following items are **not** considered income: casual or sporadic gifts; amounts specifically for or in reimbursement of medical expenses; lump sum payments such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses; educational scholarships paid directly to



the student or educational institution; government benefits to a veteran for education; special pay to a serviceman head of family away from home and under hostile fire; foster child care payments; value of coupon allotments for purpose of food under Food Stamp Act of 1964 which is in excess of amount actually charged the eligible household; relocation payments under Title II of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; payments received pursuant to participation in the following programs: VISTA, Service Learning Programs, and Special Volunteer Programs, SCORE, ACE, Retired Senior Volunteer Program, Foster Grandparent Program, Older American Community Services Program, and National Volunteer Program to Assist Small Business Experience.

- 2. This affidavit is made with the knowledge that it will be relied upon by the Landlord to determine maximum income for eligibility and (I/we) warrant that all information set forth in this document is true, correct and complete and based upon information (I/we) deem reliable and that the estimate contained in paragraph 1 of this Part III is reasonable and based upon such investigation as the undersigned deemed necessary.
- 3. (I/We) will assist the Landlord in obtaining any information or documents required to verify the statements made in this Part III and have attached hereto copies of federal income tax return for most recent tax year in which a return was filed (past two years federal income tax returns for self-employed persons).
- 4. (I/We) acknowledge that (I/we) have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of (my/our) agreement with the Landlord to rent the unit and will additionally enable the Landlord, the City of Moreno Valley to initiate and pursue all applicable legal and equitable remedies with respect to the unit and to me/us.

(I/We) do hereby swear under penalty of perjury that the foregoing statements are true and correct.

\_\_\_\_\_
Date

\_\_\_\_\_
Tenant

\_\_\_\_\_
Date

\_\_\_\_\_
Tenant



**INCOME VERIFICATION**  
**(for self-employed persons)**

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

## ATTACHMENT NO. 11

## EQUITY SHARE NOTE

## PROMISSORY NOTE

## (PROMISSORY NOTE SECURED BY DEED OF TRUST)

## NOTICE TO MAKER: EQUITY SHARE AMOUNT(S) SHALL BE DUE AND PAYABLE IF CERTAIN EVENTS OCCUR

\$209,190.00 (“Original Principal Amount”) plus equity share amount(s) Moreno Valley, California  
 \_\_\_\_\_, 2015 (“Loan Date”)

Site Address: 22889 Allies Place

Moreno Valley, California 92551  
 City State Zip Code

FOR VALUE RECEIVED, the undersigned RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California Limited Partnership, a California non-profit public benefit corporation (“Maker” or “Participant”), having its principal place of business at 3985 University Avenue, California 92501, promises to pay to the order of CITY OF MORENO VALLEY, a municipal corporation (“Payee”), at 14177 Frederick Street, Moreno Valley, California 92552-0805, or at such other place as the holder of this promissory note (the “Note”) from time to time may designate in writing, the principal sum of Two Hundred Nine Thousand One Hundred Ninety Dollars (\$209,190.00), together with such equity share amount(s) as become payable from time to time. This Note is being delivered pursuant to the Affordable Housing Agreement dated as of September 22, 2015, by and between Maker and Payee (the “AHA” or the “Agreement”). The loan evidenced by this Note shall be governed by such provisions of the AHA (including without limitation the attachments thereto) as shall be applicable. All capitalized terms used herein shall have the meanings set forth therefor in the AHA. No interest shall accrue on the amounts so disbursed provided that the loan evidenced by this Note includes provision for equity sharing.

1. **Term.** The term of this Note (the “Term”) commences as of the Loan Date and shall continue to and mature on July 1, 2071 (the “Maturity Date”).

2. **Payments.** Payments shall be due and payable hereunder in the event of the transfer of the “Site” (as defined in the AHA and described in the Equity Share Deed of Trust) or the occurrence of any default under the AHA, the Senior Note, the Capital Recovery Note, the Resale Restriction Agreement, or the CC&Rs.

3. **Note Amount.** The sums due and payable pursuant to the terms and provisions of this Note consist of both the Original Principal Amount and amounts which become payable as “Equity Share Amounts” (as set forth in Section 7 hereof), as both terms are hereinafter defined (collectively, the “Note Amount”);

(i) **Loan Amount.** As one component of the Note Amount, Maker shall pay to City the principal amount of Two Hundred Nine Thousand One Hundred Ninety Dollars (\$209,190.00); and

(ii) **Equity Share Amount(s).** As a second component of the Note Amount, Maker shall pay to City an Equity Share Amount as set forth in Section 7 herein. It is contemplated that this Note will remain in effect throughout the Required Covenant Period, and that equity share payments will be made to the Payee in connection with each “Transfer” (as defined below) that occurs during the Required Covenant Period (whether or not the Payee accelerates payment hereunder). It is further contemplated that the deed of trust securing payment of this Note will not be reconveyed in that it secures performance under the AHA and the CC&Rs.

4. **Loan Amount; No Interest, Equity Share.** The Loan Amount shall accrue no (0%) interest; provided that upon occurrence of each and every event of acceleration occurs as set forth in Section 6, an Equity Share Amount shall become due and payable.

5. **Loan Amount; Time of Payment and Forgiveness.** No repayment of the Loan Amount shall be required unless and until the Note Amount becomes due and payable, as provided in Section 6 below.

6. **Acceleration.** In addition to Section 2 hereof, in the event of any Transfer (as defined below) of the Site, or any portion thereof or interest therein, Payee shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable (including the whole of the Note Amount and the Equity Share Amount). As used herein, the term “Transfer” means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Site, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Site, granting of an option to purchase any portion of or interest in the Site or any interest therein, or the lease of all or substantially all of the Site or of all or substantially all of the improvements located thereon. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer. “Transfer” shall not include: (i) the leasing of individual dwelling units on the Site so long as Trustor fully complies with the provisions of the CC&Rs and the AHA relating to such leasing activity; (ii) the sale or other transfer of the Site to a transferee which is accomplished in strict compliance with the Agreement and with City’s prior written approval, or (iii) the refinancing of the Senior Loan amount not in excess of the sum of the then current loan balance secured by the Senior Loan and loan closing costs, provided that there is no change to the rights and remedies of the City under the Agreement (including without limitation the attachments thereto) in connection with such refinancing.

7. **Equity Share Amount(s).** In the event that the Note Amount becomes due and payable pursuant to Section 6 above, the Maker shall pay to Holder the “Equity Share Amount(s),” as hereinafter defined. The Note Amount, including without limitation an Equity Share Amount, shall

be computed and shall be due and payable in connection with each and every Event of Acceleration (as described in Section 6 hereof) which occurs during the Affordability Period.

(a) **Calculation of Equity Share Amount(s).** The “Equity Share Amount(s)” means an amount equal to a percentage share of the appreciation of the Site determined by multiplying a variable percentage factor (“Variable Applicable Factor”) by the difference between the Sales Price and the Purchase Price.

(b) **Variable Applicable Factor Calculation.** The Variable Applicable Factor shall be calculated by dividing the “Net City Investment” (as defined below) by the sum of the City Investment plus the Maker’s total initial equity investment as described below (“Participant Investment”). The “Net City Investment” is derived by taking the Holder’s total initial equity investment of \$629,865 (“City Investment”) then subtracting the original principal amount under the Capital Recovery Note (namely, \$243,675.00) and the Senior Note (\$177,000.00), with the resulting amount (namely, \$209,190.00) constituting the “Net City Investment”. In computing the Variable Applicable Factor, the Net City Investment shall be the numerator, and the sum of the Net City Investment plus the Participant Investment shall be the denominator of a fraction that equals a percentage that is the Variable Applicable Factor (subject to Section 7(b)(i)).

$$\text{Variable Applicable Factor} = \frac{\text{Net City Investment}}{\text{Net City Investment} + \text{Participant Investment}}$$

For example, if the Net City Investment equals \$209,190.00, for purpose of illustration, and the Participant Investment equals \$0, the Variable Applicable Factor would equal 100% (\$209,190.00 divided by the sum of \$209,190.00 plus \$0).

$$100\% \text{ (Variable Applicable Factor)} = \frac{\$209,190.00 \text{ (Net City Investment)}}{\$209,190.00 \text{ (Net City Investment)} + \$0 \text{ (Participant Investment)}} = (\$209,190.00)$$

The amount of the Net City Investment shall be deemed to be Two Hundred Nine Thousand One Hundred Ninety Dollars (\$209,190.00) (the “Net City Investment Amount”), based upon the total amount of moneys committed by the City under the AHA less the original principal amount of each of the Senior Note and the Capital Recovery Note.

The “Participant Investment” is the sum of the following amounts contributed by Trustor to the Site: (i) Trustor’s cash down payment (consisting only of equity and not including any amounts loaned; namely, zero) and (ii) Trustor’s portion of closing costs (to the extent paid in cash by Trustor). In the above illustration, it is assumed that the Participant makes no cash down payment and makes no payment for closing costs.

The “Purchase Price” is the original purchase price paid by Maker (or Maker as the qualified successor owner of the Site) to the seller of the Site (“Seller”) for Seller’s interest in the Site, exclusive of escrow fees, title insurance costs, broker’s commissions, loan fees or any other closing or transaction costs; in the case of the initial purchase of the Site by the Maker, the sum of \$263,000 (the “Original Price”) is the purchase price. Subject to the provisions set forth herein

below, the value of Qualified Capital Improvements shall be added to the Purchase Price when calculating the Equity Share Amount(s).

The “Sales Price” is the price to be paid by the prospective buyer of the Site (“Buyer”) to Maker (or Maker as the qualified successor owner of the Site) for Maker’s interest in the Site, exclusive of reasonable escrow fees, title insurance costs, broker’s commissions, loan fees or any other closing or transaction costs. The Sales Price shall be established in conformity with Section 7(h)(i). In the event of Maker’s refinancing, failure to occupy, or default under the Agreement, the “Sales Price” shall be established in conformity with Section 7(h)(ii).

(c) **Using the Variable Applicable Factor to Determine the Equity Share Amount(s).** The Equity Share Amount(s) is calculated by multiplying the Variable Applicable Factor by the difference between the Sales Price and the Purchase Price. For example, if the Variable Applicable Factor equals 100%, the Equity Share Amount(s) would then be computed based upon a Factor of 100% (Variable Applicable Factor) x (Sales Price minus the Purchase Price).

In the above example, if the Purchase Price equals \$263,000 and the Sales Price (for a sale occurring prior to the tenth (10th) anniversary of the acquisition of the Site by the original owner and assuming no Qualified Capital Improvements) equals \$300,000, the Equity Share Amount(s) would equal \$37,000 (100% x (\$300,000 minus \$263,000)).

$$100\% \text{ (Variable Applicable Factor)} \times \$37,000 \text{ (Sales Price – Purchase Price)} = \$37,000 \text{ (Equity Share Amount(s)).}$$

Using the same example but assuming that the sale takes place after the tenth and prior to the eleventh anniversary of the acquisition of the Site by the Participant, the Equity Share Amount would equal \$33,300 (90.00% Variable Rate Factor [100.00 – 10 = 90] x \$37,000 [Sales Price – Purchase Price] = \$33,300 [Equity Share Amount]). Note: the setting forth of the examples herein does not indicate that such sales are permitted; the restrictions as to affordable rents and Low Income as set forth in the Agreement, the Resale Restriction Agreement and the CC&Rs will apply.

(d) **Calculation of Equity Share Amount(s) for Subsequent Buyers (Participants).** If pursuant to Section 9 hereof, a Buyer has fully assumed the Maker’s obligations under the Agreement, this Note, the Participant completes the Improvements and operates the Site in strict conformity with each of the AHA, the CC&Rs, the Resale Restriction Agreement, this Note and the Equity Share Deed of Trust, and such Buyer causes an event of acceleration to occur, the Equity Share Amount(s) to be paid by such Buyer shall be calculated by multiplying the Variable Applicable Factor, established in Section 7(b) above (and subject to Section 7(e) below), by the difference between the Sales Price, established in conformity with Section 7(h) hereof, and the Purchase Price.

(e) **Credits for Trustor.** Notwithstanding the foregoing portion of this Section 7, in calculating the Variable Applicable Factor, in the event, the Participant completes the Improvements and operates the Site in strict conformity with each of the AHA, the CC&Rs, the Resale Restriction Agreement, this Note and the Equity Share Deed of Trust for a period of not less than ten (10) years, the Variable Applicable Factor shall be reduced by one (1) percentage point per year (or a total of ten [10] points). Thereafter, for each additional year that the Participant (or an



assignee or transferee approved by the City) operates the Site in strict conformity with the CC&Rs, the Variable Applicable Factor shall be reduced by one percentage point (1.0%).

The process for adjustments is more specifically as follows: for the period commencing with the Date of Agreement and until the tenth anniversary of the Date of Agreement (the "Tenth Anniversary"), the Variable Applicable Factor shall be One Hundred Percent (100%), excepting only for such adjustments, if any, as shall have been approved by the City in connection with Qualified Capital Improvements, if any, made and approved under subsection (f) hereof. Within sixty (60) days after the Tenth Anniversary, the City Manager (on behalf of the City) will determine whether the Participant has operated and is operating the Site in conformance with the Agreement (including all attachments thereto). In the event the City Manager determines there has been conforming operation throughout the ten-year period and that there continues to be conforming operation, the Participant will be credited with a ten percent (10%) equity share, to be effective as of the Tenth Anniversary; upon application of such ten percent (10%) equity share, the Variable Applicable Factor shall become ninety percent (90%)[100% - 10% = 90%].

Thereafter, as of the first anniversary of the Tenth Anniversary, the City Manager shall determine if there has been conforming operation within the preceding year. If such conforming operation is determined to have occurred, a credit of one percent (1.0%) shall be applied as an equity share adjustment. For example, assuming conforming operation is determined for the first eleven (11) years from the Date of Agreement, the Participant shall have achieved an equity share adjustment of eleven percent (11.0%), with the result that the Variable Applicable Factor would be Eighty-Nine (89.0%).

The process described in the preceding paragraph would be repeated annually, with the result that as of the fifty-fifth (55th) anniversary of the Date of Agreement, assuming conforming operation throughout, the Participant would be eligible to obtain a maximum adjustment of equity share of fifty percent (50%).

The determination that a credit is to be applied shall not result in the payment of cash at that time to the Participant (or any successor); any distribution of funds shall occur only concurrent with payment to the City in connection with an event that causes payment to become due.

The payment to Participant (or any successor) of any amounts attributable to adjustments to the equity share (or Variable Applicable Factor) shall be subject and subordinate to the full satisfaction of the principal amounts of each of the Equity Share Note (this promissory note).

In the event of a change of ownership of the Site, the Variable Applicable Factor shall be recalculated by the City Manager of the City consistent with the methodology used in establishing the original Variable Applicable Factor as of the Date of Agreement, and the process for the availability of credits in respect to conforming operation of the Site shall be repeated in the manner described in the foregoing portion of this subsection (e); provided that the only credits or adjustments available after such a transfer shall be one percent (1.0%) per year for each year of conforming operation occurring after such transfer.

(f) **Qualified Capital Improvements.** The value of any Qualified Capital Improvements which are determined by the City to be required and are completed by Maker during Maker's ownership of the Site and are not paid for by the City shall be added to the Purchase Price when calculating the Equity Share Amount(s) only if, within thirty (30) days following completion of

such improvements (but in no event later than the event of acceleration causing the Equity Share Amount(s) to become immediately due and payable pursuant to Section 6 hereof), Maker submits the following to Holder: (i) an itemized list of the Qualified Capital Improvements, (ii) reliable proof of completion of the Qualified Capital Improvements (as evidenced e.g., by final building permits, certificate of completion or original paid invoices or construction contracts), and (iii) an appraisal from a certified appraiser, in form and substance reasonably acceptable to the City Manager (the “City Manager”), the conclusion of which is that the Qualified Capital Improvements have added the stated amount to the fair market value of the Site.

If, within (30) days of receipt of the information concerning the Qualified Capital Improvements, Holder questions the claimed increase in the value of the Site by reason of said Qualified Capital Improvements, Holder and Maker may, by mutual agreement, establish the value of the Qualified Capital Improvements or Holder may require an appraisal of the Site, at Makers expense, by a second independent certified appraiser appointed by the Holder to determine the fair market value of the Qualified Capital Improvements.

(g) **Determination of Sales Price; Appraisal.**

(i) **Upon Sale of the Site.** In the event of a proposed sale of the Site by Maker and not less than thirty (30) days after Holder receives actual notice of the opening of escrow in connection therewith, the Holder may elect to appoint a certified, independent appraiser to conduct an appraisal of the Site, at Maker’s expense, to assist Holder in determining if the Sales Price is at or near the fair market value of the Site at such time. If the Sales Price is determined by the appraisal to be three percent (3%) or more below the fair market value of the Site as estimated in said appraisal, then the “Sales Price” for purposes of determining the Equity Share Amount(s) shall be the fair market value of the Site established in said appraisal.

(ii) **Upon Refinancing/Failure to Occupy/Default.** In the event of refinancing, sale, other transfer, or default or breach of any provision of the Agreement (including all attachments thereto) which causes the Equity Share Amount(s) to become immediately due and payable, the “Sales Price” for purposes of determining the Equity Share Amount(s) shall be determined by an appraisal of the Site. Holder shall appoint a certified independent appraiser to conduct an appraisal of the Site, at Maker’s expense. Maker agrees that in such event the Equity Share Amount(s) shall be the Variable Applicable Factor multiplied by the difference between the Purchase Price and “Sales Price” as established by the appraised value of the Site at the time of such refinancing, sale, other transfer, or default of the Agreement (including all attachments thereto).

8. **Maker’s Acknowledgment of Equity Share Amount(s).**

**MAKER ACKNOWLEDGES AND AGREES THAT UPON SALE, TRANSFER OR REFINANCING OF THE SITE OR OTHER EVENT OF ACCELERATION, MAKER SHALL PAY TO HOLDER, IN ADDITION TO THE ORIGINAL PRINCIPAL AMOUNT, AN EQUITY SHARE AMOUNT(S) EQUAL TO A PERCENTAGE SHARE OF THE APPRECIATION OF THE PROPERTY AS CALCULATED PURSUANT TO THIS SECTION 7.**

**MAKER’S INITIALS:** \_\_\_\_\_

9. **Security for Note.** This Note shall be secured by a subordinate deed of trust and rider thereto of even date herewith encumbering the Site (“the Equity Share Deed of Trust”), executed by Maker, as trustor, in favor of Holder, as beneficiary.

10. **No Prepayment of Note.** This Note may not be prepaid.

11. **Holder May Assign.** Holder may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Maker.

12. **Maker Assignment Prohibited.** In no event shall Maker assign or transfer any portion of this Note, the Note Amount and/or the Agreement without the prior express written consent of the Holder, as provided in Section 9 hereof.

13. **Successors Bound.** This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

14. **Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Note shall be in writing and shall be either personally served, sent by telecopy, mailed in the United States mails, certified, return receipt requested, postage prepaid, or sent by other commercially acceptable means, addressed to the party to be served with the copies indicated below, at the last address given by that party to the other under the provisions of this section. All communications shall be deemed delivered at the earlier of actual receipt, the next business day after deposit with Federal Express or other overnight delivery service or two (2) business days following mailing as aforesaid, or if telecopied, when sent, provided a copy is mailed or delivered as provided herein:

**To Maker:**

Riverside Housing Development Corporation  
Attn: Bruce Kulpa  
3985 University Avenue  
Riverside, CA 92501

**To City:**

City of Moreno Valley  
 14177 Frederick Street  
 Moreno Valley, California 92552-0805  
 Attention: Economic Development Director

15. Miscellaneous.

(a) Governing Law. All questions with respect to the construction of this Note and the rights and liabilities of the parties to this Note shall be governed by the laws of the State of California.

(b) Binding on Successors. This Note shall inure to the benefit of, and shall be binding upon, the successors and assigns of each of the parties to this Note.

(c) Attorneys' Fees.

(i) Maker shall reimburse Payee for all costs and expenses, incurred by Payee in connection with the enforcement of Payee's rights under this Note, including, without limitation, attorneys' fees (based upon the rates customarily charged by the attorneys to private clients), costs and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements or for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys' fees (based upon the rates customarily charged by the attorneys to private clients), costs and expenses incurred to protect Payee's security and attorneys' fees, costs and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) seeking relief from stay in a bankruptcy proceeding. The term "expenses" means any expenses incurred by Payee in connection with any of the out-of-court, or state, federal or bankruptcy proceedings referred to above, including, without limitation, the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by Payee in connection with any such proceeding.

(ii) Payee shall also be entitled to its attorneys' fees, costs and expenses incurred in any post-judgment proceedings to collect and enforce the judgment. This provision is separate and several and shall survive the merger of this Note into any judgment on this Note.

(d) Entire Agreement. This Note and the relevant provisions of the AHA constitute the entire agreement and understanding between and among the parties in respect of the subject matter of such agreements and supersede all prior agreements and understandings with respect to such subject matter, whether oral or written.

(e) Amendments. This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.]

(f) Time of the Essence. Time is of the essence with respect to every provision hereof.

(g) Waivers by Maker. Except as otherwise provided in any agreement executed in connection with this Note, Maker waives: presentment; demand; notice of dishonor; notice of default or delinquency; notice of acceleration; notice of protest and nonpayment; notice of costs,

expenses or losses and interest thereon; and diligence in taking any action to collect any sums arising under this Note or in any proceeding against any of the rights or interests in or to properties securing payment of this Note.

(h) Non-waivers. No previous waiver and no failure or delay by Maker in acting with respect to the terms of this Note or the Equity Share Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Note, the Equity Share Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the Equity Share Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by this Note, the terms of this Note shall prevail.

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 12  
EQUITY SHARE DEED OF TRUST**

Order No.  
Escrow No.  
Loan No.

WHEN RECORDED MAIL TO:  
City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805  
Attention: City Manager

APN 291-293-009

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST WITH ASSIGNMENT OF RENTS  
(SHORT FORM)**

This DEED OF TRUST, made as of \_\_\_\_\_, 201\_, between

RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation, a California non-profit public benefit corporation herein called TRUSTOR, whose address is:

3985 University Avenue, Riverside, California 92501

TICOR TITLE COMPANY OF CALIFORNIA, a California corporation, herein called TRUSTEE, and

the CITY OF MORENO VALLEY, a public body corporate and politic, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Moreno Valley,  
County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$209,190.00 and equity share payments(s) according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

incorporated by reference or contained herein, (3) the maintenance of four (4) rental units on the Site as affordable units to be rented to Low Income Households at Affordable Rent as provided for in the Affordable Housing Agreement and the CC&Rs as referenced in Exhibit "B" hereto; and (4) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust. THIS DEED OF TRUST SECURES A LOAN THAT HAS THE EFFECT OF A SHARED APPRECIATION LOAN.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Riverside County on August 18, 1964 at Book 3778, Page 347 in the office of the county recorder of Riverside County shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.



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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT "A"****LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 39 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-009

**EXHIBIT "B"****RIDER TO DEED OF TRUST**

Exhibit B to Deed of Trust with Assignment of Rents dated as of \_\_\_\_\_, 201\_, executed by Riverside Housing Development Corporation, a California nonprofit public benefit corporation, as "Trustor", to Ticor Title Company of California, a California corporation, as Trustee, for the benefit of City of Moreno Valley, a municipal corporation, as "Beneficiary" ("Deed of Trust").

1. **DEFAULT - OTHER DEEDS OF TRUST, DEED, COVENANTS CONDITIONS AND RESTRICTIONS (CC&Rs) AND AGREEMENT.** A default under any of the following shall, at Beneficiary's option, constitute a default under this Deed of Trust:
  - (a) A default under that certain Affordable Housing Agreement ("Agreement") dated as of September 22, 2015, between Trustor and Beneficiary or any default under any instrument delivered to City under the Agreement, whether senior or junior to this Deed of Trust (all capitalized terms not defined herein shall have the meanings established therefor under the Agreement);
  - (b) A default under the CC&Rs;
  - (c) A default under the Resale Restriction Agreement;
  - (d) A default under the Capital Recovery Note or the Capital Recovery Deed of Trust; or
  - (e) A default under Senior Note or the Senior Deed of Trust.
2. **DEFAULT - DEED OF TRUST.** A default under this Deed of Trust shall, at Beneficiary's option, as appropriate, constitute a default under the deeds of trust or other instruments referenced in Paragraph 1(a) through (g), inclusive (collectively the "Other Deeds of Trust"), of this Rider.
3. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deeds of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.
4. **DUE ON SALE OR ENCUMBRANCE.** In the event of any Transfer (as defined below) of the Site, or any portion thereof or interest therein, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term "Transfer" means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Site, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Site, granting of an option to purchase any portion of or interest in the Site or any interest therein, or the lease of all or substantially all of the Site or of all or substantially all of the improvements situated on the Site. "Transfer" shall not include the leasing of individual dwelling units on the Site so long as Trustor complies with the provisions of the Agreement relating to such leasing activity. Transfer shall not include the sale, transfer, assignment, pledge,

Exhibit "B" to Attachment No. 12

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hypothecation or encumbrance by Participant's limited partner of its partnership interest to the extent permitted by the AHA nor shall Transfer include the removal or any general partner of Participant by the limited partner for cause and the replacement of such removed general partner by another person or entity in accordance with the terms of the Participant's partnership agreement to the extent permitted by the AHA. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

5. **PRIORITY OF DEED OF TRUST.** This Deed of Trust is subject and subordinate to the following: (i) the CC&Rs, (ii) the Resale Restriction Agreement and (iii) the Senior Deed of Trust.
6. **EQUITY SHARE PAYMENTS.** In addition to the principal amount of \$209,190, the promissory note secured by this deed of trust provides for equity sharing payments as described therein.

## DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

G. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

H. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such

Exhibit “B” to Attachment No. 12

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successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary means the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**DO NOT RECORD** REQUEST FOR FULL RECONVEYANCE

TO TICOR TITLE COMPANY OF CALIFORNIA, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,  
Note and Reconveyance to  
\_\_\_\_\_

*Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.*

**DEED OF TRUST  
with power of sale**

**TICOR TITLE COMPANY OF CALIFORNIA,  
TRUSTEE**

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



ATTACHMENT NO. 13

RESALE RESTRICTION AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

CITY OF MORENO VALLEY  
Attention: City Manager  
15177 Frederick Street  
Moreno Valley, California 92552-0805

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 291-293-009

RESALE RESTRICTION AGREEMENT  
OF CONDITIONS, COVENANTS AND RESTRICTIONS

This Resale Restriction Agreement (the "RRA") is entered into as of the dates written below, by and between the RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (the "Owner" or "Participant") and the CITY OF MORENO VALLEY, a public body corporate and politic (the "City"). Owner and the City may be individually referred to as a "Party" and collectively as the "Parties". The Parties desire to enter into this Agreement on the following terms and conditions:

1. RECITALS.

1.1 These Recitals refer to and utilize certain capitalized terms that are defined in Section 2 of this RRA. The Parties intend to refer to those definitions in conjunction with the use of capitalized terms in these Recitals. The Recitals are an integral part of this Agreement.

1.2 The City and the Owner entered into an agreement dated as of September 22, 2015, entitled "Affordable Housing Agreement" (herein the "AHA"). Under the AHA: (i) the City purchased certain property described in Exhibit "A" hereto (the "Site") with its funds (and with no equity by the Owner); (ii) the Owner promised the City that the Owner would improve and operate the Site as an affordable rental housing resource, in conformity with the AHA; and (iii) the City committed substantial moneys, as more particularly set forth in the AHA. All capitalized terms not

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

defined herewith shall have the meanings established in the AHA. The AHA is on file with the City as a public record and is deemed incorporated herein by reference.

2. **TERM OF AGREEMENT.** The term of this RRA shall commence as of the date of recordation of this RRA (the “Effective Date”) and shall expire at 11:59 p.m. on the last day that is the Fifty-fifth (55th) anniversary of the Effective Date (which period constitutes the “Term”).

3. **SALE RESTRICTIONS.** The Owner may not transfer the Site except as provided in, and in conformity with, provisions of this Agreement and the AHA. “Transfer” means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Site, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, a mortgage, a deed of trust (other than as expressly approved in writing by City) or an interest evidenced by a land sale contract by which possession of the Site is transferred and Owner retains title. Any Transfer without satisfaction of the provisions of this Agreement is prohibited. The Owner shall not Transfer the Site without prior written consent of the City. The AHA provides, in part (note: references to “Agreement” in the quoted material inset in this Section 3 are to the AHA):

“**7.11** Transfers of Interest in Agreement or of Site. Section 7.11, and all subsections of this Section 7.11, shall apply to transfers prior to the Transfer. Any transfers occurring or proposed after the Transfer are subject to the provisions therefor of the CC&Rs.

**7.11.1** Prohibition. The qualifications and identity of the Participant are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with the Participant. For the period commencing upon the date of this Agreement and until the end of the Required Covenant Period, no voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement, nor shall the Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Development thereon (excepting the rental of Units at Affordable Rent to Low Income Households in strict conformity with this Agreement and the CC&Rs) without prior written approval of City, except as expressly set forth herein.

**7.11.2** Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, the City shall not unreasonably withhold its approval of an assignment of this Agreement or conveyance of the Site, or any part thereof, in connection with the conveyance or dedication of any portion of the Site to the City, or the granting of easements or permits to facilitate construction of the Development.

In the event of a proposed assignment by Participant under subparagraphs 7.11.2 through 7.11.3, inclusive, Participant agrees that at least thirty (30) days prior to such assignment it shall give written notice to City including a request for approval of such assignment and satisfactory evidence that the assignee has assumed jointly with Participant the obligation to perform under this Agreement.

**7.11.3** City Consideration of Requested Transfer. City agrees that it will consider in good faith a request made pursuant to this Section 7.11 after the achievement of occupancy of one hundred percent (100%) of the Units in conformity with this Agreement following the completion of the Improvements, provided that: (i) the Participant causes to be delivered to City written evidence from HUD that HUD consents to and does not object to the action

requested; (ii) the Participant pays, or is prepared to pay concurrent with transfer, the amount due under the Equity Share Note in connection with such transfer; (iii) the Participant delivers written notice to City requesting such approval, which notice and the CC&Rs remain in full force and effect; (iv) the Participant is not in default of this Agreement or any attachments hereto; (v) the Participant provides detailed information regarding the transferee (the background, training, experience relative to the operation of affordable rental projects, and its capitalization) and of the proposed transfer (including price, terms of payment, time and place for closing); and/or the agreement of the transferee to be bound by and subject to all of the Development Documents, including without limitation, the CC&Rs, the Resale Restriction Agreement, the Senior Note, the Capital Recovery Note, the Equity Share Note (which shall be adjusted upon transfer based upon the receipt of equity sharing moneys by the City, as more fully described in the Equity Share Note), the Senior Deed of Trust, the Equity Share Deed of Trust, and the Capital Recovery Deed of Trust; and (vi) the Participant pays to City the sum of Five Thousand Dollars (\$5,000.00) (“Special Charges”), on a nonrefundable basis to assist City in defraying its cost to conduct due diligence, consider and process any such request (amounts so paid as Special Charges shall not be applied as payments due under the Equity Share Note or any other Note). Evidence regarding any proposed assignee or purchaser shall be detailed concerning the proposed assignee’s or purchaser’s development and/or operational qualifications and experience, its financial commitments and resources, and shall, in addition, describe in detail the financial terms of such assignment (including the consideration proposed to flow to the Participant or Related Entity and/or any of the Principals) in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 7.11, and as reasonably determined by City. Upon receipt of such request (including payment of the amount due as the equal share), the City shall evaluate each proposed transferee or assignee on the basis of its development and/or qualifications and experience in the operation of facilities similar to the Development, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 7.11 applies, which City reasonably determines does not possess sufficient qualifications. An assignment and assumption agreement in form satisfactory to City’s legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Participant’s written notice requesting approval of an assignment or transfer pursuant to this Section 7.11, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Participant shall promptly furnish to City such further information as may be reasonably requested. No such approval shall be given without written evidence of the consent or approval by HUD.

**7.11.4 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Participant and its permitted successors and assigns. Whenever the term “Participant” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.”

4. **CONSENT AND ACKNOWLEDGMENT OF OWNER.** The Owner agrees that the provisions of this Agreement are reasonable and appropriate in view of the following:

(i) The City is providing one hundred percent (100%) of the equity (and approximately 100% of the total funding) required for the purchase of the Site (which acquisition

was accomplished by purchase made by the City prior to entering into the Agreement) and the improvement of the Site under the Scope of Work: Budget. The City's willingness to enter into the AHA and devote the level of funding as prescribed under the AHA is based upon assurance that all Units on the Site will be maintained available at Affordable Rent for Low Income Households throughout the Required Covenant Period;

(ii) Participant is a sophisticated party with substantial experience in the acquisition, improvement and operation of affordable rental housing and with California real estate law. Participant has reviewed, and has consulted with legal counsel of Participant's choosing, concerning the Rules and Regulations and the AHA, including without limitation the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust, the Equity Share Note, the Capital Recovery Note, the Capital Recovery Deed of Trust, the CC&Rs, the RRA and the Equity Share Deed of Trust.

Accordingly, the Participant agrees and acknowledges that it is reasonable that the City have all rights and remedies, including without limitation equity sharing, limits upon resale or transfer, and such other restrictions or prohibitions as are provided under the AHA and its attachments including without limitation the CC&Rs, this RRA, the Senior Note, the Senior Deed of Trust, the Capital Recovery Note, the Capital Recovery Deed of Trust, the Equity Share Note and the Equity Share Deed of Trust.

5. **DEFAULTS AND REMEDIES.** The Owner's failure to comply with any term or provision of this Agreement will be deemed to be a violation of this Agreement. In addition, the Owner will be deemed to have violated this Agreement if the Owner defaults under any promissory note, deed of trust or lien, including if any judgment lien is recorded against the Site. Furthermore, the Owner will be deemed to have violated this Agreement if any foreclosure proceeding is instituted against the Site. Upon any such violation, the City will give a written notice ("Notice of Default") to the Owner specifying the nature of the violation. The Notice of Default will specify the amount of time that Owner has to correct the violation, but in no event will the Owner have more than thirty (30) days to correct such violation from the date such Notice of Default is mailed to the Owner. If the Owner does not correct the violation to the City's satisfaction within the specified time period, then the City may declare a default under this Agreement and will send Owner a notice that Owner has defaulted under this Agreement ("Declaration of Default"). The Owner will automatically be in default under this Agreement (without the City sending a Notice of Default) if the Owner or the Proposed Purchaser makes any misrepresentation of any nature whatsoever in connection with receiving any benefits under this Agreement, and upon any such event occurring, the City may immediately send the Owner a Declaration of Default. Upon the City sending the Owner a Declaration of Default, the City may apply to a court of competent jurisdiction for specific performance of this Agreement; for an injunction prohibiting a proposed sale or transfer in violation of this Agreement; for a declaration that a transfer in violation of this Agreement is void; for rescission of any sales contract that violates this Agreement; or for any other such relief at law or in equity as may be appropriate.

## 6. **PURCHASE OPTION UPON DEFAULT.**

6.1 **Purchase Option:** Notwithstanding, and in addition to, the remedies provided to the City in Section 5, the Owner hereby grants to the City the option ("Option") to purchase the Site once the City has given the Owner a Declaration of Default (pursuant to Section 5 hereof) following the giving of a Notice of Default and the failure of Owner to accomplish a cure as

provided under Section 5 hereof. The purchase Option will begin upon the date of the Declaration of Default and will continue until the thirtieth (30th) day following the final establishment of the Sales Price under the remainder of this Section 6.1 (which period constitutes the “Notice of Exercise Period”). Said Option to purchase is given in consideration of the economic benefits received by the Owner resulting from ownership of the Site made possible by the reduced purchase price by which the Owner initially acquired the Site from the City. The City may purchase the Site for the Sales Price.

(a) *Determination of Initial Value:* the value of the Site will be determined initially by the City or an appraiser selected by the City based upon the value of the Site (including improvements thereon) subject to the restrictions and limitations on the rental of all units on the Site to Low Income Households as provided under the CC&Rs; the amount as so established constitutes the “Initial Value”. In the event the City is obtaining an appraisal, it shall have sixty (60) days to obtain such appraisal and to tender its offer of sale. If an appraiser is utilized by the City, the appraiser shall be instructed to and the appraisal shall utilize the following parameters (the “Appraisal Parameters”): (A) it shall utilize and rely upon the income approach, and (B) it shall be based upon the use of the Site for rental housing (with rents conforming to the requirements of the CC&Rs throughout the Required Covenant Period. The City shall transmit in writing to the Owner following the determination by the City (or, if an appraiser is engaged for such purpose, the determination of value by such appraiser): (i) the determination of value by City or the appraiser, or (ii) notice that the City has elected not to proceed to exercise its rights to acquire the Site by means of the Option.

(b) Within ten (10) business days after the City has transmitted a writing setting forth the Initial Value to Owner, Owner shall deliver in writing to City a writing setting forth: (i) such Owner’s decision to sell the Site to the City for an amount equal to the Initial Value; (ii) the Owner’s opinion of value; or (iii) such Owner’s decision to retain an appraiser to provide an opinion of value of the Site subject to the Limitations on Use and utilizing the Appraisal Parameters. If the Owner approves the Initial Value, such amount shall be deemed to constitute the “Final Value.” In the event the Owner is obtaining an appraisal, it shall have sixty (60) days to obtain such appraisal and deliver its offer to sell to City based upon such value. An amount determined under (ii) or (iii) of this subsection (b) shall constitute the “Alternative Value.” In the event the Owner fails to deliver its written response to the City by the time set forth in this subsection (b), then the Initial Value shall be deemed to constitute the “Final Value.”

(c) Within ten (10) business days after the City receives a writing from Owner under subsection (b) of this Section 6.1, the City shall notify the Owner in writing that: (i) the City has elected to open escrow for the purchase of the Site based upon the Initial Value (which shall be applicable in the event the Owner agrees that the Initial Value shall constitute the Final Value, or if the Owner fails to deliver its written response under subsection (b) by the time prescribed therefor in such subsection (b) in which event the Initial Value shall be deemed to constitute the Final Value); (ii) the City has elected to open escrow for the purchase of the Site treating the Alternative Value as the Final Value; (iii) the City has elected to not proceed to exercise its rights to acquire the Site by means of the Option; or (iv) the City has elected to reject the Alternative Value and instead elects to appoint an independent MAI appraiser (the “Independent MAI Appraiser”) to determine the value of the Site. In the event the City elects option (iv), the City shall select the Independent MAI Appraiser; excepting that if the Owner had submitted concurrent with its submittal of the Alternative Value an appraisal by a member of the Member Appraisal Institute expressing the opinion that such Alternative Value is the value of the Site (as subject to the Limitations on Use and the Appraisal



Parameters), then the appraiser so selected by the Owner and, if an MAI appraiser is designated by the City, such appraiser, shall designate the Independent MAI Appraiser.

In the event the Independent MAI Appraiser is designated, such appraiser shall determine a value for the Site subject to the Limitations on Use and the Appraisal Parameters (the “Independent MAI Value”). The Owner and the City agree that, in such case, whichever of the Initial Value or the Alternative Value is closer to the Independent MAI Value, shall be deemed to constitute the “Final Value” for purposes of this Agreement and in connection with establishing the Sales Price for the Site.

(d) In connection with any purchase of the Site under this Section 6.1, the City shall receive credit for any indebtedness to City with respect to the Site, including without limitation the Equity Share Note, the Senior Note, and the Capital Recovery Note.

**6.2 Implementation of Sale Upon Establishment of Final Value.** Within five (3) working days following the establishment of the Final Value, the City shall: (i) deliver its written notice that it elects not to acquire the Site under Section 6.1; (ii) deliver to Owner both: (aa) a written notice of its election to exercise the Option in the form attached hereto as **Exhibit B** (the “Exercise Notice”), and (bb) two (2) copies of the City’s standard or customary real estate purchase and sale agreement for income-restricted homes (“Purchase Agreement”), both of which are duly-executed by the City. Upon Owner receiving the Exercise Notice and the two (2) duly-executed Purchase Agreements, Owner shall execute both copies of the Purchase Agreement and return one fully-executed original to the City. Owner’s failure to execute and deliver a copy of the Purchase Agreement in accordance with this Section 6.2 shall not affect the validity of the Purchase Agreement. The Purchase Agreement shall be immediately effective and binding on both Owner and the City without further execution by the Parties, on exercise of the Option in accordance with this Section 6.2. The City may, instead of purchasing the Site itself, assign its option and right to purchase the Site.

**6.3 PURCHASE OPTION DOES NOT LIMIT REMEDIES.** THE PURCHASE OPTION SHALL NOT LIMIT ANY REMEDIES AVAILABLE TO CITY OR AGENCY UNDER THE AHA, INCLUDING WITHOUT LIMITATION REMEDIES UNDER ONE OR MORE OF THE CC&Rs, THE EQUITY SHARE NOTE, THE EQUITY SHARE DEED OF TRUST, THE SENIOR NOTE, THE SENIOR DEED OF TRUST, THE CAPITAL RECOVERY NOTE, AND THE CAPITAL RECOVERY DEED OF TRUST. Without limitation as to other remedies that are available to the City, the obligation of the Owner to convey the Site to the City shall be enforceable by specific performance.

**7. NONLIABILITY OF THE CITY.** In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its Option to purchase under Section 6.1, nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its Option to purchase.

**8. BINDING ON SUCCESSOR AND ASSIGNS.** This Agreement is binding on the Owner and his or her heirs, successors, assigns, transferees, legatees, devisees, and all other persons that acquire any interest in the Site from Owner. It is also binding on anyone to whom the Owner sells, transfers, assigns or grants an interest in the Site, including any secured lender who obtains title through foreclosure or a “deed in lieu” of foreclosure. Furthermore, any purchasers, transferees,

assignees, legatees, devisees, donees or foreclosing lenders that acquire any, or the entire, interest in the Site of any nature whatsoever will be subject to the terms and conditions of this Agreement.

## 9. COVENANTS RUN WITH THE LAND.

9.1 Owner hereby declares its express intent that the provisions of this Agreement shall be deemed covenants running with the land and shall pass to and be binding upon all parties having any interest in the Site throughout the Term. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring the Site or any interest therein, as the case may be, shall conclusively be held to have been executed, delivered and accepted subject to this Agreement regardless of whether the other party or parties to such contract, deed, lease or any other such instrument have actual knowledge of this Agreement.

9.2 The Owner and the City hereby declare their understanding and intent that 1) this Agreement shall be construed as covenant and servitude running with the land pursuant to California Civil Code Section 1468 and not as conditions which might result in forfeiture of title by Owner; 2) the burden of the covenants and restrictions set forth in this Agreement touch and concern the Site in that the Owner's legal interest in the Site and all improvements thereon may be rendered less valuable thereby; and 3) the benefit of the covenants and restrictions set forth in this Agreement touch and concern the land by implementing provision by the City of affordable rental housing in implementing its housing goals and objectives and each of: means each of: (i) Community Development Act of 1974, 42 U.S.C. 5301 et seq. ("HCD Act") as amplified by regulations set forth at 24 C.F.R. 570; (ii) the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 C.F.R. Part 58; (iii) the HOME Regulations; (iv) Section 3; and (v) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, approved July 21, 2010, including regulations cited at 75 FR 64322.

9.3 All covenants and restrictions contained herein, without regard to technical classification or designation, shall be binding upon Owner for the benefit of the City and this Agreement shall run in favor of such parties for the entire Term of this Agreement, without regard to whether the City is an owner of any land or interest therein to which this Agreement relate.

## 10. GENERAL PROVISIONS.

10.1 **Amendment.** This Agreement may not be amended, modified or supplemented except by a written agreement executed by all the Parties.

10.2 **Assignment.** The City may transfer or assign all of its rights under this Agreement to any third party at any time without receiving Owner's prior consent.

10.3 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their permitted successors and assigns, and any reference to a Party hereto shall also be a reference to a permitted successor or assign.

10.4 **Controlling Law.** This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of California without reference to California's choice of law rules.



10.5 **Interpretation.** In the event any claim is made by any Party relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Party or his or its counsel. The Parties further agree that California Civil Code Section 1654 does not apply to this Agreement. This Agreement shall be interpreted to further the affordable housing objectives of the City and particularly the protection of long-term affordability covenants.

10.6 **Jurisdiction and Venue.** The Parties acknowledge and understand that the making of this Agreement is in Riverside County, California. Any suit, arbitrations, mediation or other remedial process shall be filed and maintained in Riverside County, California.

10.7 **Notices.** All notices, communications and deliveries hereunder shall be made in writing signed by the Party making the same, shall specify the Section hereunder pursuant to which it is given or being made, and shall be deemed given or made on either 1) the date delivered if delivered in person, 2) on the date initially received if delivered by facsimile transmission followed by registered or certified mail confirmation, 3) on the date delivered if delivered by a nationally recognized overnight courier service or 4) on the third (3rd) business day after it is mailed if mailed by registered or certified mail (return receipt requested) (with postage and other fees prepaid) as follows:

To Owner: Riverside Housing Development Corporation  
3985 University Avenue  
Riverside, CA 92501  
Attn: Bruce Kulpa

To the City: City of Moreno Valley  
Attention: City Manager  
11777 Frederick Street  
Moreno Valley, CA 92552-0805

or to such other representative or at such other address of a Party as such Party hereto may furnish to the other Parties in writing.

10.8 **Number; Gender.** Whenever the context so requires, the singular number shall include the plural and the plural shall include the singular, and the gender of any pronoun shall include the other genders.

10.9 **Remedies Cumulative.** The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any person may be lawfully entitled.

10.10 **Waiver.** The Parties hereto, by or pursuant to action taken by their respective members, partners or officers, may, to the extent legally permitted: (i) extend the time for the performance of any of the obligations or other acts of any other Party; (ii) waive any inaccuracies in the representations or warranties of any other Party contained in this Agreement or in any document or certificate delivered pursuant hereto; (iii) waive compliance or performance by any other Party with any of the covenants, agreements or obligations of such Party contained herein; and (iv) waive the satisfaction of any condition that is precedent to the performance by the Party so waiving of any of its obligations hereunder. Any agreement on the part of a Party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. A

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

waiver by one Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

IN WITNESS WHEREOF, the Parties have executed this Resale Restriction Agreement as of the dates written below:

**“OWNER”**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

**CITY:**

**CITY OF MORENO VALLEY,** a municipal corporation

By: \_\_\_\_\_  
City Manager

**LIST OF EXHIBITS:**

Exhibit A - Legal Description of Site

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT A****LEGAL DESCRIPTION OF THE SITE**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 39 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-009

**EXHIBIT B**

**EXERCISE NOTICE**

Riverside Housing Development Corporation  
3985 University Avenue  
Riverside, CA 92501  
Attn: Executive Director of RHDC

Re: Exercise Notice pursuant to Resale Restriction Agreement (under Affordable Housing Agreement dated as of September 22, 2015 between the City of Moreno Valley ["City"] and Riverside Housing Development Corporation, a California nonprofit public benefit corporation ["Participant" or "Owner"]; the "Affordable Housing Agreement")

Gentlemen:

This constitutes Exercise Notice under Section 6.2 of the Resale Restriction Agreement made pursuant to the Affordable Housing Agreement. Section 6.2 provides, in part: "Upon Owner receiving the Exercise Notice and the two (2) duly-executed Purchase Agreements, Owner shall execute both copies of the Purchase Agreement and return one fully-executed original to the City. Owner's failure to execute and deliver a copy of the Purchase Agreement in accordance with this Section 6.2 shall not affect the validity of the Purchase Agreement." The City requests that you execute and return two (2) Purchase Agreements, executed by you, to: [insert addressee and address for City]. The Purchase Agreement provides, in part: a) the City shall bear customary costs of escrow, title and recording; b) escrow and other closing costs that are not customary and result from a request by Owner shall be borne by Owner; and c) the Owner shall bear the cost for any unpaid delinquent or nondelinquent property taxes, bonds and assessments and/or penalties and interest thereon due on the Site.

Escrow [has been opened with \_\_\_\_\_][will be opened with \_\_\_\_\_ promptly upon receipt of the signed Purchase Agreements].

Your cooperation in connection with effecting a closing as soon as feasible will be appreciated.

CITY:

CITY OF MORENO VALLEY, a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: City Manager

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 14**  
**SENIOR DEED OF TRUST**

Order No.  
Escrow No.  
Loan No.

WHEN RECORDED MAIL TO:  
City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805  
Attention: City Manager

APN 291-293-009

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST WITH ASSIGNMENT OF RENTS**  
**(SHORT FORM)**

This DEED OF TRUST, made as of \_\_\_\_\_, 201\_, between

RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation, a California non-profit public benefit corporation herein called TRUSTOR, whose address is:

3985 University Avenue, Riverside, California 92501

TICOR TITLE COMPANY OF CALIFORNIA, a California corporation, herein called TRUSTEE, and

the CITY OF MORENO VALLEY, a public body corporate and politic, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Moreno Valley,

County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$177,000.00 plus interest according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor incorporated by reference or contained herein, (3) the maintenance of four (4) rental units on the Site as affordable units to

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

be rented to Low Income Households at Affordable Rent as provided for in the Affordable Housing Agreement and the CC&Rs as referenced in Exhibit "B" hereto; (4) payment of amounts due under Section 3.4 of the Affordable Housing Agreement; and (5) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Riverside County on August 18, 1964 at Book 3778, Page 347 in the office of the county recorder of Riverside County shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

*Signature of Trustor*

On \_\_\_\_\_ before me,

RIVERSIDE HOUSING DEVELOPMENT CORPORATION,  
a California nonprofit public benefit corporation

personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person(s) whose names(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.

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

(This area for official notaries seal)

WITNESS my hand and official seal

SIGNATURE \_\_\_\_\_

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



**EXHIBIT "A"****LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 39 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-009

**EXHIBIT "B"****RIDER TO DEED OF TRUST**

Exhibit B to Deed of Trust with Assignment of Rents dated as of \_\_\_\_\_, 201\_, executed by Riverside Housing Development Corporation, a California nonprofit public benefit corporation, as "Trustor", to Ticor Title Company of California, a California corporation, as Trustee, for the benefit of City of Moreno Valley, a municipal corporation, as "Beneficiary" ("Deed of Trust").

1. **DEFAULT - OTHER DEEDS OF TRUST, DEED, COVENANTS CONDITIONS AND RESTRICTIONS (CC&Rs) AND AGREEMENT.** A default under any of the following shall, at Beneficiary's option, constitute a default under this Deed of Trust:
  - (a) A default under that certain Affordable Housing Agreement ("Agreement") dated as of September 22, 2015, between Trustor and Beneficiary or any default under any instruments delivered to City delivered under the Agreement, whether senior or junior to this Deed of Trust (all capitalized terms not defined herein shall have the meanings established therefor under the Agreement);
  - (b) A default under the CC&Rs;
  - (c) A default under the Resale Restriction Agreement;
  - (d) A default under the Capital Recovery Note or the Capital Recovery Deed of Trust; or
  - (e) A default under Senior Note or the Senior Deed of Trust.
2. **DEFAULT - DEED OF TRUST.** A default under this Deed of Trust shall, at Beneficiary's option, as appropriate, constitute a default under the deeds of trust or other instruments referenced in Paragraph 1(a) through (e), inclusive (collectively the "Other Deeds of Trust"), of this Rider.
3. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deeds of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.
4. **DUE ON SALE OR ENCUMBRANCE.** In the event of any Transfer (as defined below) of the Site, or any portion thereof or interest therein, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term "Transfer" means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Site, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Site, granting

of an option to purchase any portion of or interest in the Site or any interest therein, or the lease of all or substantially all of the Site or of all or substantially all of the improvements situated on the Site. "Transfer" shall not include the leasing of individual dwelling units on the Site so long as Trustor complies with the provisions of the Agreement relating to such

Exhibit "B" to Attachment No. 14

Page 1 of 5

leasing activity. Transfer shall not include the sale, transfer, assignment, pledge, hypothecation or encumbrance by Participant's limited partner of its partnership interest to the extent permitted by the AHA nor shall Transfer include the removal or any general partner of Participant by the limited partner for cause and the replacement of such removed general partner by another person or entity in accordance with the terms of the Participant's partnership agreement to the extent permitted by the AHA. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

5. **PRIORITY OF DEED OF TRUST.** This Deed of Trust is subject and subordinate to the following: (i) the CC&Rs.

**DO NOT RECORD**

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

G. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

H. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such

successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary means the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**DO NOT RECORD** REQUEST FOR FULL RECONVEYANCE

TO TICOR TITLE COMPANY OF CALIFORNIA, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,  
Note and Reconveyance to

\_\_\_\_\_

*Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.*

**DEED OF TRUST  
with power of sale**

**TICOR TITLE COMPANY OF CALIFORNIA,  
TRUSTEE**

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

## ATTACHMENT NO. 15

**CAPITAL RECOVERY NOTE**  
**(This Note is secured by a deed of trust)**

\$243,675.00

Moreno Valley, California

\_\_\_\_\_ 1, 201\_

Property Address: 22889 Allies Place  
 Moreno Valley, CA 92551

Maturity: July 1, 2071

**FOR VALUE RECEIVED**, the undersigned (“Maker”) promises to pay to the City of Moreno Valley (“Holder”) at 14177 Frederick Street, Moreno Valley, CA 92552, or at such other address as Holder may direct from time to time in writing, the sum of Two Hundred Forty-Three Thousand Six Hundred Seventy-Five Dollars (\$243,675.00) (the “Capital Recovery Note Amount”). Such amounts, if any, as become payable to Holder pursuant to Section 3.4 of the “Agreement” (as defined below) shall be added to the principal amount payable hereunder. All sums hereunder shall be payable in lawful money of the United States of America.

**1. Loan Agreement.** This Capital Recovery Note (the “Capital Recovery Note”) is made and delivered pursuant to and in implementation of the Affordable Housing Agreement entered by and between the Holder and the Maker dated as of September 22, 2015 (the “Agreement”), a copy of which is on file as a public record with the Holder. The Agreement is incorporated herein by this reference. The Maker acknowledges that but for the execution of this Capital Recovery Note, the Holder would not enter into the Agreement or make the loans contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

**2. Interest Rate.** The Capital Recovery Amount shall bear interest at the rate of zero percent (0%) per annum.

**3. Payments; Time of Payment.** On or before May 1, commencing May 1, 2015, Make shall delivery to Holder a report of Residual Receipts in conformity with the “Form of Residual Receipts Report” as prescribed by the Agreement. Maker shall make annual payments to Holder on the first day of each July commencing July 1, 2015 and continuing on the first day of each July thereafter in each year to and including July 1, 2071 in the amount of fifty percent (50.00%) of the “Residual Receipts” (as defined in the Agreement) for the Development for the preceding Year.

**4. Acceleration.** The whole of the Capital Recovery Note Amount shall, at the election of the City, become due and be immediately payable to the Holder by the Maker upon the occurrence of any of the following events: (a) the sale or transfer of the Property, including, without limitation, the lease, exchange or other disposition of the Property or any interest therein, whether voluntary or involuntary, except (i) the rental of the Required Affordable Units at the Site to Low Income Households at Affordable Rent, or (ii) the transfer of the Property permitted by the Agreement and as to which the prior written approval of the City has been obtained. The failure by Holder to elect to accelerate upon the occurrence of an event within a particular time after the occurrence of such event

shall not operate as a waiver of Holder's right to accelerate and to declare all amounts due hereunder to be immediately payable.

**5. Security for Note.** This Capital Recovery Note shall be secured by a deed of trust and rider thereto of even date herewith encumbering the Site based upon the amount hereof ("Capital Recovery Deed of Trust"), executed by Maker, as trustor, in favor of Holder, as beneficiary.

**6 Prepayment of Note.** Maker may prepay this Note to Holder, provided that any prepayment must be in full and not in part. Prepayment shall not, however, release Maker from the requirements of CC&Rs, the Resale Restriction Agreement, the Senior Note, the Equity Share Note, or the other provisions of the Agreement. In addition, prepayment shall be treated in the same manner as a refinancing of the Property.

**7. Holder May Assign.** Holder may, at its option, assign its right to receive payment under this Capital Recovery Note without necessity of obtaining the consent of the Maker.

**8. Maker Assignment Prohibited.** In no event shall Maker assign or transfer any portion of this Capital Recovery Note, or its obligations as to the Capital Recovery Note Amount and/or under the Agreement without the prior express written consent of the Holder.

**9. Joint and Several.** The undersigned, if more than one person, shall be jointly and severally liable hereunder.

**10. Attorneys' Fees and Costs.** In the event that any action is instituted to enforce payment under this Capital Recovery Note, the parties agree the non-prevailing party shall be responsible for and shall pay to the prevailing party all court costs and all attorneys' fees (based upon the rates customarily charged by the attorneys to private clients) incurred in enforcing this Capital Recovery Note.

**11. Amendments.** This Capital Recovery Note may not be modified or amended except by an instrument in writing expressing such intention executed by the parties sought to be bound thereby, which writing must be so firmly attached to this Capital Recovery Note so as to become a permanent part thereof.

**12. Maker's Waivers.** Maker waives any rights to require the Holder to: (a) demand payment of amounts due (known as "presentment"), (b) give notice that amounts due have not been paid (known as "notice of dishonor"), and (c) obtain an official certification of nonpayment (known as "protest").

**13. Notice.** Any notice that must be given to Maker under this Capital Recovery Note shall be given by personal delivery or by mailing it by certified mail addressed to Maker at the Property address above or such other address as Maker shall direct from time to time in writing. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment. Any notice to Holder shall be given by certified mail at the address stated above.

**14. Successors Bound.** This Capital Recovery Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, Maker has executed this Capital Recovery Note as of the date set forth below.

**MAKER:**

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION,**

a California nonprofit public benefit corporation

Dated: \_\_\_\_\_, 201\_

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

Name: Bruce Kulpa

Title: Executive Director

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

ATTACHMENT NO. 16

CAPITAL RECOVERY DEED OF TRUST

Order No.  
Escrow No.  
Loan No.

WHEN RECORDED MAIL TO:  
City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, California 92552-0805  
Attention: City Manager

APN 291-293-009

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST WITH ASSIGNMENT OF RENTS  
(SHORT FORM)

This DEED OF TRUST, made as of \_\_\_\_\_, 201\_, between

RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation, a California non-profit public benefit corporation herein called TRUSTOR, whose address is:

3985 University Avenue, Riverside, California 92501

TICOR TITLE COMPANY OF CALIFORNIA, a California corporation, herein called TRUSTEE, and

the CITY OF MORENO VALLEY, a public body corporate and politic, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the City of Moreno Valley,  
County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$243,675.00 plus interest according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor incorporated by

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

reference or contained herein, (3) the maintenance of four (4) rental units on the Site as affordable units to be rented to Low Income Households at Affordable Rent as provided for in the Affordable Housing Agreement and the CC&Rs as referenced in Exhibit "B" hereto; (4) payment of amounts due under Section 3.4 of the Affordable Housing Agreement; and (5) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Riverside County on August 18, 1964 at Book 3778, Page 347 in the office of the county recorder of Riverside County shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

*Signature of Trustor*

On \_\_\_\_\_ before me,

RIVERSIDE HOUSING DEVELOPMENT CORPORATION,  
a California nonprofit public benefit corporation

\_\_\_\_\_ personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(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.

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

(This area for official notaries seal)

WITNESS my hand and official seal

SIGNATURE \_\_\_\_\_

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**EXHIBIT "A"****LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 39 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-009



**EXHIBIT “B”****RIDER TO DEED OF TRUST**

Exhibit B to Deed of Trust with Assignment of Rents dated as of \_\_\_\_\_, 201\_, executed by Riverside Housing Development Corporation, a California nonprofit public benefit corporation, as “Trustor”, to Ticor Title Company of California, a California corporation, as Trustee, for the benefit of City of Moreno Valley, a municipal corporation, as “Beneficiary” (“Deed of Trust”).

1. **DEFAULT - OTHER DEEDS OF TRUST, DEED, COVENANTS CONDITIONS AND RESTRICTIONS (CC&Rs) AND AGREEMENT.** A default under any of the following shall, at Beneficiary’s option, constitute a default under this Deed of Trust:
  - (a) A default under that certain Affordable Housing Agreement (“Agreement”) dated as of September 22, 2015, between Trustor and Beneficiary or any default under any instruments delivered to the City under the Agreement, whether senior or junior to this Deed of Trust (all capitalized terms not defined herein shall have the meanings established therefor under the Agreement);
  - (b) A default under the CC&Rs;
  - (c) A default under the Resale Restriction Agreement;
  - (d) A default under the Equity Share Deed of Trust;
  - (e) A default under the Capital Recovery Note or the Capital Recovery Deed of Trust; or
  - (f) A default under Senior Note or the Senior Deed of Trust.
2. **DEFAULT - DEED OF TRUST.** A default under this Deed of Trust shall, at Beneficiary’s option, as appropriate, constitute a default under the deeds of trust or other instruments referenced in Paragraph 1(a) through (g), inclusive (collectively the “Other Deeds of Trust”), of this Rider.
3. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deeds of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.
4. **DUE ON SALE OR ENCUMBRANCE.** In the event of any Transfer (as defined below) of the Site, or any portion thereof or interest therein, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, the term “Transfer” means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Site, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Site, granting of an option to purchase any portion of or interest in the Site or any interest therein, or the lease of all or substantially all of the Site or of all or substantially all of the improvements

Exhibit “B” to Attachment No. 16

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situated on the Site. “Transfer” shall not include the leasing of individual dwelling units on the Site so long as Trustor complies with the provisions of the Agreement relating to such leasing activity. Transfer shall not include the sale, transfer, assignment, pledge, hypothecation or encumbrance by Participant’s limited partner of its partnership interest to the extent permitted by the AHA nor shall Transfer include the removal or any general partner of Participant by the limited partner for cause and the replacement of such removed general partner by another person or entity in accordance with the terms of the Participant’s partnership agreement to the extent permitted by the AHA. Failure of Beneficiary to exercise the option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute waiver of the right to exercise this option in the event of any subsequent Transfer.

5. **PRIORITY OF DEED OF TRUST.** This Deed of Trust is subject and subordinate to the following: (i) the CC&Rs, (ii) the Resale Restriction Agreement, (iii) the Senior Deed of Trust and (iv) the Equity Share Deed of Trust.

**DO NOT RECORD**

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

G. To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) to pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

H. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto.”

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such

Exhibit “B” to Attachment No. 16

Page 4 of 5

successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary means the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**DO NOT RECORD** REQUEST FOR FULL RECONVEYANCE

TO TICOR TITLE COMPANY OF CALIFORNIA, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please mail Deed of Trust,  
Note and Reconveyance to

\_\_\_\_\_

*Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.*

**DEED OF TRUST  
with power of sale**

**TICOR TITLE COMPANY OF CALIFORNIA,  
TRUSTEE**

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

**ATTACHMENT NO. 17**  
**PARTICIPANT PRO FORMA**  
[to come]





KEYSER MARSTON ASSOCIATES™  
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

**MEMORANDUM**

**ADVISORS IN:**  
Real Estate  
Redevelopment  
Affordable Housing  
Economic Development

**To:** Shanikqua Freeman, Housing Programs Coordinator  
City of Moreno Valley

**SAN FRANCISCO**  
A. Jerry Keyser  
Timothy C. Kelly  
Kate Earle Funk  
Debbie M. Kern  
Reed T. Kawahara  
David Doezema

**From:** Kathleen Head  
Tim Bretz

**Date:** September 16, 2015

**LOS ANGELES**  
Kathleen H. Head  
James A. Rabe  
Gregory D. Soo-Hoo  
Kevin E. Engstrom  
Julie L. Romey

**Subject:** 22889 Allies Place: HOME Subsidy Layering Review

**SAN DIEGO**  
Paul C. Marra

At your request, Keyser Marston Associates, Inc. (KMA) prepared a subsidy layering review for the four-unit 22889 Allies Place Apartments (Project) being proposed by the Riverside Housing Development Corporation (Developer). The purpose of this subsidy layering review is to quantify the amount of HOME Program (HOME) funds, in combination with other governmental assistance, that is necessary to provide the proposed affordable housing units. The HOME funds are received by the City of Moreno Valley (City) from the United States Department of Housing and Urban Development (HUD).

**EXECUTIVE SUMMARY**

The Developer is proposing to rehabilitate a four-unit apartment complex located at 22889 Allies Place (Site). The Project consists of four one-bedroom units, which will be subject to long-term income and affordability covenants.

The KMA pro forma analysis estimates the Project costs at \$682,000. Based on the available information, KMA estimates that the Developer will be able to obtain a \$53,000 conventional loan for the Project. This leaves an approximately \$629,000 unfunded financial gap. The Developer is requesting \$629,000 in HOME funds assistance from the City, which is equal to the financial gap identified in the KMA analysis.

The results of the subsidy layering review can be described as follows:

1. The analysis demonstrates that the proposed \$629,000 in HOME funds assistance is necessary to provide the proposed affordable housing units.

500 SOUTH GRAND AVENUE, SUITE 1480 > LOS ANGELES, CALIFORNIA 90071 > PHONE 213.622.8095

WWW.KEYSERMARSTON.COM

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

- 2. The HOME Program regulations impose Davis Bacon wage requirements on projects that include 12 or more designated HOME units. Given that the Project includes four units, each of which to be designated as a HOME unit, the HOME funds assistance will not trigger Davis Bacon wage requirements.
- 3. The Project fulfills the HOME Program requirement that at least 20% of the units assisted with HOME funds be affordable to very-low income households.
- 4. The Developer has demonstrated the capacity and financial wherewithal to undertake the proposed Project.
- 5. The Developer did not provide a formal market study for the Project. However, KMA analyzed the rent comparables submitted by the Developer, as well as independently reviewed the market conditions in the vicinity of the Site. The affordable rents proposed by the Developer are sufficiently below the area's market rents to generate demand for the units.

**PROJECT DESCRIPTION**

The proposed scope of development can be described as follows:

- 1. The Site consists of approximately 7,200 square feet of land area.
- 2. The Project consists of four existing one-bedroom units that are proposed to be rehabilitated.
- 3. The Project's affordability mix will consist of one Low HOME unit and three High HOME units.

**FINANCIAL GAP ANALYSIS**

KMA prepared a pro forma analysis to assist in evaluating the Developer's proposal. The pro forma analysis follows this memorandum, and is organized as follows:

Table 1:	Estimated Development Costs
Table 2:	Estimated Stabilized Net Operating Income
Table 3:	Financial Gap Calculation

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

### **Estimated Development Costs (Table 1)**

KMA reviewed the Developer's development cost estimate, and then independently prepared a pro forma analysis for the Project. The resulting development cost estimates for the Project are as follows:

#### ***Property Assemblage Costs***

The Developer purchased the property on the open market in October 2014 for \$258,000, or \$64,500 per unit. The Developer submitted a final escrow statement from Apian Escrow Co., Inc. that confirms the \$258,000 purchase price.

Del Rey Appraisal Services conducted an appraisal on September 11, 2015 and estimates the market value of the property at \$260,000. As such, the City's proposed purchase price of \$258,000 is approximately equal to the appraised value of the property.

As currently proposed, the City intends to convey the property to the Developer for the purposes of rehabilitating the existing units. The total property assemblage costs to be incurred by the Developer are estimated at \$263,000, which includes the following:

1. Property acquisition costs equal to \$258,000; and
2. Closing costs, which are estimated at \$5,000, or approximately 2% of the acquisition costs.

#### ***Direct Costs***

The direct cost estimates assume that neither State of California nor Federal Davis Bacon prevailing wage requirements will be imposed on the Project. The Developer provided a construction cost estimate for the Project that was prepared by an independent contractor. This estimate includes a detailed breakdown of the rehabilitation costs. The direct costs applied in the analysis can be summarized as follows:

1. The Developer estimates the on-site improvement costs at \$32,000.
2. The Developer estimates the demolition costs at \$31,000.
3. The Developer estimates the rehabilitation costs at \$249,000, or approximately \$62,200 per unit.

KMA assumes that contractors' fees, general requirements and insurance costs are included in the direct costs outlined above. Based on the information provided, KMA estimates the total direct costs at \$312,000.

### ***Indirect Costs***

KMA utilized the following assumptions for estimating the Project's indirect costs:

1. The architecture, engineering and consulting costs are estimated at approximately 1% of acquisition and direct costs.
2. The Developer estimated the public permits and fees and other indirect costs at \$23,000, or \$5,600 per unit. City staff should verify the accuracy of this estimate.
3. The Developer set the Developer Fee at \$40,000, which is equal to 6% of total development costs.
4. The Developer included an indirect cost contingency allowance equal to 5% of Project Costs.<sup>1</sup>

Based on the information provided, KMA estimates the indirect costs at \$100,000.

### ***Financing Costs***

The Developer intends to fund the construction of the Project with available cash-on-hand. As such, there are no construction period interest costs will be incurred.

The Developer included a \$7,000 capitalized operating reserve in the Project budget. This is a reserve allowance that is typically included in projects with limited cash flow.

### ***Total Development Costs***

As shown in Table 1, KMA estimates the total development costs at approximately \$682,000. This equates to \$170,500 per unit.

### **Estimated Stabilized Net Operating Income (Table 2)**

The Project's funding sources include a conventional loan and HOME funds. The HOME Program publishes household income limits and rent standards that must be applied to the HOME-designated units.

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<sup>1</sup> Project Costs are equal to the total development costs less the developer fee, project contingency allowance, and replacement reserve costs.

The 2015 HOME Program rents for one-bedroom units, net of the applicable utility allowance, are as follows:<sup>2</sup>

1. Low HOME Units - \$536
2. High HOME Units - \$705

The Developer is concerned about the marketability of the High HOME units at the statutorily set maximum rent of \$705 per month. As a reflection of this concern, the Developer proposes to set the rent for the High HOME units at \$600 per month.

To assist in projecting the achievable rents, KMA undertook a review of the rents currently being charged for similar apartment projects in the vicinity of the Site. Based on this review, KMA estimates that the average market rate rent is approximately \$750 per month. Therefore, the proposed \$600 per month rent for the High HOME units is approximately 20% less than the prevailing market rent. A discount of this magnitude should be more than sufficient to attract tenants to the units.

#### ***Estimated Effective Gross Income***

KMA estimates the Project's effective gross income at \$26,400 based on the following assumptions:

1. The gross income is estimated at \$28,000.
2. Laundry and miscellaneous income is estimated at \$11 per unit per month, or approximately \$500 per year.
3. A vacancy and collection allowance equal to 7.5% of gross income is provided. This equates to \$2,100.

#### ***Estimated Operating Expenses***

The residential operating expenses are estimated at \$21,500 based on the following assumptions:

1. The general operating expenses are estimated at \$4,630 per unit per year.
2. KMA assumes that the Developer will apply for the property tax abatement that is accorded to non-profit organizations that own apartments restricted to households earning less than 80% of the median income.

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<sup>2</sup> The monthly utility allowance is estimated at \$92 for a one-bedroom unit.

- 3. The annual replacement reserve deposits are estimated at \$300 per unit per year.

**Estimated Stabilized Net Operating Income**

The Project’s effective gross income is estimated at \$26,400, and the operating expenses are estimated at \$21,500. This results in estimated stabilized net operating income of \$4,900.

**Financial Gap Calculation**

The financial gap is estimated by deducting the available outside funding sources from the Project’s total development costs. The Developer intends to obtain a \$53,000 conventional permanent loan as the only outside funding source for the Project. The loan amount is based on the following assumptions:

- 1. A stabilized net operating income of \$4,900;
- 2. A 1.25 debt service coverage ratio;
- 3. A 30-year amortization period; and
- 4. A 6.25% interest rate.

**Calculation of Warranted HOME Funds Assistance**

Based on the assumptions outlined in this analysis, KMA calculates the warranted HOME funds assistance as follows:

Total Development Costs	\$682,000
(Less) Total Available Funding Sources	(53,000)
Warranted HOME Funds Assistance	\$629,000
Per Unit	\$157,250

The Developer is requesting \$629,000 in HOME funds assistance from the City. This assistance request is equal to the financial gap identified in the KMA analysis. As such, KMA concludes that the Developer’s request for \$629,000 in HOME funds assistance is warranted by the Project’s financial characteristics.

**HOME PROGRAM REQUIREMENTS (TABLE 4)**

The City must comply with the following HOME Program requirements:

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

## Layering Requirements

HOME Program regulations require projects to provide a layering analysis demonstrating that the HOME assistance is required to provide affordable housing. Based on the results of the preceding analysis, it is the KMA conclusion that the Developer's request for \$629,000 in HOME funds assistance is warranted by the Project economics. Thus, it can be concluded that the assistance package complies with the HOME layering requirement.

## HOME Unit Designation

HUD establishes two tests for quantifying the number of units in the Project that must be designated as HOME units. One test is referred to as the Development Cost Test, and the other test is called the Subsidy Limit Test. These tests can be described as follows:

### *Development Cost Test*

The Development Cost Test calculates the minimum number of HOME units based on the percentage of the Project's total costs that are funded with the HOME Program assistance. The calculation for the Project is:

1. \$629,000 in HOME funds assistance is assumed to be provided.
2. KMA estimates the Project costs at \$682,000.
3. Based on the preceding assumptions, the HOME funds assistance is equal to 92% of the Project costs.
4. Under the Development Cost Test, 92% of the four units must be designated as HOME units. This equates to 3.69 units, which is rounded up to four units.

### *Subsidy Limit Test*

HUD establishes subsidy limits based on the number of bedrooms included in the HOME-assisted units. The 2015 HOME Subsidy Limit for a one-bedroom unit in Riverside County is \$157,466. Based on the amount of HOME funds included in the Project, the Subsidy Limit Test results in a four-unit requirement.

### *Designated HOME Units*

Both the Development Cost Test and the Subsidy Limit Test result in the requirement for four designated HOME units. Thus, per the layering requirements, the City must designate all four units in the Project as HOME units.



The HOME Program also requires at least 20% of the units assisted with HOME funds be affordable to very-low income households, and the balance of the units be reserved for low income households. One unit in the Project will be restricted to Low HOME households and the remaining three units will be restricted to High HOME households. As such, the Project meets the income allocation requirements imposed by the HOME Program.

### **Analysis of Market Conditions**

The HOME Program requires Participating Jurisdictions to verify that the affordable rents in the Project will be sufficiently lower than the market rents in the Project's market area to generate adequate demand for the affordable units. The Developer has not obtained a formal market study for the Project. However, based on their experience in the market area, they are estimating the achievable rents at \$600 per month.

KMA undertook a review of apartment projects in the vicinity of the Site, and found average market rates at \$750 per month. The Developer's proposal to rent the High HOME units at \$600 per month represents a 20% discount from the prevailing market rents. The discount for the Low HOME unit is 29%. It is KMA's opinion that discounts of this magnitude will be more than sufficient to attract qualified tenants to the units.

### **Developer's Financial Capacity**

The HOME Program regulations require Participating Jurisdictions to assess the development capacity and fiscal soundness of developers requesting HOME funds assistance. HUD guidance related to this evaluation indicates that the Developer's recent, similar, successful experience developing and operating comparable projects may be used to assist in establishing the Developer's capacity to undertake a project that is requesting HOME funds assistance.

The Developer's financial capacity can be summarized as follows:

1. The Developer submitted audited financial statements for 2013 and 2014 that comply with the generally accepted accounting principles (GAAP). The financial statements show that the Developer has sufficient liquid assets and the financial strength to complete the Project.
2. The evidence of the Developer's financial strength is further bolstered by the fact that the Developer is proposing to self-fund the acquisition and construction costs with cash-on-hand.
3. The Developer submitted a portfolio of 500 rental units that are owned and/or managed by the Developer.

It is the KMA conclusion that the Developer has the development capacity and fiscal soundness to undertake the proposed Project.

### SUMMARY OF FINDINGS

1. It is the KMA conclusion that the proposed \$629,000 in HOME funds assistance is necessary to provide the proposed affordable housing units.
2. Each of the four units in the Project must be designated as HOME units. At least one of these units must be designated as a Low HOME unit.
3. The provision of \$629,000 in HOME funds assistance to the Project will not trigger Davis Bacon wage requirements.
4. The Developer has demonstrated the development capacity and fiscal soundness to undertake the Project.
5. The Developer's proposed affordable rents are 20% to 29% below the currently prevailing market rents in the vicinity of the Site.
6. The appraised value of the Site is estimated at \$260,000, which is approximately equal to the purchase price of \$258,000.
7. The financial structure of the Project requires the City to subordinate the \$629,000 HOME Loan to a \$53,000 first trust deed from a private lender. The HOME Loan Agreement should be structured to provide the City with the right to cure any defaults with regards to the first trust deed to ensure that the property is not foreclosed upon. This is a critical transaction point given that the City will be required to repay any outstanding balance of the HOME Loan if the affordability restrictions are removed during the HOME Loan's affordability period.
8. It is anticipated that the HOME Loan will be repaid from 50% of the Project's residual receipts. It is estimated that the Project's residual receipts will total approximately \$1,000 in Year 1, which would result in a residual receipts payment to the City of \$500. It is important to note, that these residual receipts payments are not projected to be sufficient to repay the HOME Loan during the affordability period. As such, the City should anticipate being required to forgive a portion of the HOME Loan at the end of the term period.

**ESTIMATED DEVELOPMENT COSTS**  
**22889 ALLIES PLACE**  
**MORENO VALLEY, CALIFORNIA**

<b>I. <u>Property Assemblage Costs</u></b>						
Property Acquisition Costs	1	4 Units	\$64,500 /Unit		\$258,000	
Closing Costs		2% Purchase Price			5,000	
<b>Total Property Assemblage Costs</b>						<b>\$263,000</b>
<b>II. <u>Direct Costs</u></b>						
On-site Improvements	2	7,200 Sf Land	\$4 /Sf Land		\$32,000	
Demolition Costs					31,000	
Rehabilitation Costs		4 Units	\$62,202 /Unit		249,000	
<b>Total Direct Costs</b>		<b>2,580 Sf GBA</b>	<b>\$121 /Sf GBA</b>			<b>\$312,000</b>
<b>III. <u>Indirect Costs</u></b>						
Architecture, Engineering & Consulting		1% Acq + Direct Costs			\$7,000	
Public Permits & Fees / Other Indirect Costs	3	4 Units	\$5,625 /Unit		23,000	
Developer Fee	4	6% Total Development Costs			40,000	
Project Contingency Allowance	5	5% Other Project Costs			30,000	
<b>Total Indirect Costs</b>						<b>\$100,000</b>
<b>IV. <u>Financing Costs</u></b>						
Interest During Construction	6				\$0	
Operating Reserve		3 Months Oper Exp & Debt Svc Pmts			7,000	
<b>Total Financing Costs</b>						<b>\$7,000</b>
<b>V. <u>Total Development Costs</u></b>						
		<b>4 Units</b>	<b>\$170,500 /Sf GBA</b>			<b>\$682,000</b>

<sup>1</sup> Del Rey Appraisal Services conducted an appraisal on September 11, 2015 and estimates the market value of the property at \$260,000.

<sup>2</sup> Based on a contractor's bid provided by the Developer. It is assumed that contractor fees and general requirements are included in the estimates. The estimates assume that neither State prevailing wage nor Federal Davis Bacon wage requirements will be imposed on the Project.

<sup>3</sup> Based on Developer estimate. The estimate should be verified by City staff.

<sup>4</sup> Based on Developer estimate.

<sup>5</sup> Other Project Costs are equal to the total development costs less the Developer Fee, Project Contingency Allowance, and Replacement Reserve.

<sup>6</sup> The Developer will finance the construction costs with cash-on-hand.

**ESTIMATED STABILIZED NET OPERATING INCOME  
22889 ALLIES PLACE  
MORENO VALLEY, CALIFORNIA**

**I. Gross Residential Income**

<u>1-Bedroom Units @ (645-Sf)</u>	1				
Low HOME		1 Unit	\$536 /Unit/Month		6,400
High HOME		3 Units	\$600 /Unit/Month		21,600
<b>Gross Income</b>					<b>\$28,000</b>
Laundry & Miscellaneous Income		4 Units	\$11 /Unit/Month		500
(Less) Vacancy & Collection Allowance		7.50% Gross Income			(2,100)
<b>Effective Gross Income</b>					<b>\$26,400</b>

**II. Operating Expenses**

General Operating Expenses		4 Units	\$4,630 /Unit		\$18,500
Property Taxes	2	4 Units	\$449 /Unit		1,800
Replacement Reserve		4 Units	\$300 /Unit		1,200
<b>Total Operating Expenses</b>					<b>\$21,500</b>

**III. Net Operating Income **\$4,900****

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

<sup>1</sup> Based on Riverside County Incomes distributed by HUD, and rents published in 2015 by the HOME Program. The utility allowance is set at \$92 per month based on the amount set by Housing Authority of the County of Riverside. The Developer stated that the High HOME units would be rented \$600 per unit due to marketability concerns.

<sup>2</sup> Assumes that the Developer will receive the property tax abatement accorded to non-profit housing organizations that own apartment units restricted to households earning less than 80% AMI.

**FINANCIAL GAP CALCULATION**  
**22889 ALLIES PLACE**  
**MORENO VALLEY, CALIFORNIA**

I.	<b><u>Permanent Loan</u></b>	1					
	Net Operating Income		\$4,900	NOI (See Table 2)			
	Income Available for Debt Service		1.25	DCR	\$3,920	Debt Service	
	Interest Rate		6.25%	Interest Rate	7.39%	Mortgage Constant	
	<b>Total Permanent Loan</b>						<b>\$53,000</b>
II.	<b><u>Financial Gap Calculation</u></b>						
	Total Construction Costs					\$682,000	
	(Less) Permanent Loan Amount					(53,000)	
III.	<b>Financial Gap</b>		<b>4 Units</b>		<b>\$157,300 /Unit</b>		<b>\$629,000</b>

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

<sup>1</sup> Based on a 30-year amortization term.

HOME UNIT DESIGNATION  
 22889 ALLIES PLACE  
 MORENO VALLEY, CALIFORNIA

I. Development Costs Test

HOME Funds Requested	\$629,000
Total Development Costs	\$682,000
HOME Funds as % of Development Costs	92%

HOME Unit Requirement 4 Units

II. Subsidy Limit Test

HOME Funds Requested \$629,000

	<u>Subsidy Limit / Unit</u>	<u>Distribution of HOME Funds Requested</u>	<u>Number of HOME Units</u>
One-Bedroom Units	\$157,466	\$629,000	4 Units
HOME Unit Requirement		\$629,000	4 Units

III. Minimum Number of HOME Designated Units 4 Units

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

HOME UNIT DESIGNATION  
 22889 ALLIES PLACE  
 MORENO VALLEY, CALIFORNIA

I. Development Costs Test

HOME Funds Requested	\$629,000
Total Development Costs	\$682,000
HOME Funds as % of Development Costs	92%

HOME Unit Requirement 4 Units

II. Subsidy Limit Test

HOME Funds Requested \$629,000

	<u>Subsidy Limit / Unit</u>	<u>Distribution of HOME Funds Requested</u>	<u>Number of HOME Units</u>
One-Bedroom Units	\$157,466	\$629,000	4 Units
HOME Unit Requirement		\$629,000	4 Units

III. Minimum Number of HOME Designated Units 4 Units

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



ATTACHMENT NO. 18

CITY DEED

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

[Empty box for recording information]

Documentary Transfer Tax: \$ \_\_\_\_\_  
Based on Full Value of Real Property Conveyed

This document is exempt from payment of a recording fee pursuant to government Code Section 27383.

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The CITY OF MORENO VALLEY, a municipal corporation (the "City"), hereby grants to RIVERSIDE HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation ("Participant" or "Grantee"), the real property described in Exhibit A attached hereto and incorporated herein (the "Property"), subject to existing easements, restrictions and covenants of record, the provisions set forth in Sections 1 and 2 hereof and the requirements of the Affordable Housing Agreement (the "AHA") between the Participant and the City as parties, dated as of September 22, 2015. All capitalized terms not defined herein shall have the respective meanings established therefor in the AHA. The AHA is on file with the City as a public record and its provisions, including without limitation the attachments thereto, are deemed to be incorporated herein by reference.

1. **Affordability Restrictions.** The use of the Property is limited to rental to households of limited income at a rent that does not exceed affordable rent, all as more particularly set forth a "Regulatory Agreement," in the form prescribed as Attachment No. 9 to the AHA (such Regulatory Agreement is sometimes referred to in the AHA as the "CC&Rs"), the Regulatory Agreement, which is to be recorded of even date herewith, is deemed to be incorporated herein by reference as fully as if set forth at length herein.

2. **Nondiscrimination.** 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,

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

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

3. The Property is required to be maintained as an affordable rental housing resource for an approximately fifty-six (56) year period commencing with the recording of this deed and ending as of July 1, 2071 (which period constitutes the "Required Covenant Period"). At all times during the Required Covenant Period, the prior written permission of the City is required for the conveyance of the Property.

**CITY:**

**CITY OF MORENO VALLEY**, a municipal corporation

\_\_\_\_\_  
City Manager

**ACKNOWLEDGMENT BY GRANTEE**

Grantee acknowledges and concurs in the foregoing, including the provisions of Sections 1, 2 and 3.

**RIVERSIDE HOUSING DEVELOPMENT CORPORATION**, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Bruce Kulpa  
Title: Executive Director

**EXHIBIT "A"****LEGAL DESCRIPTION OF PROPERTY**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 39 OF TRACT 2831, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 15 THROUGH 16, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A CERTIFICATE OF CORRECTION RECORDED JULY 23, 1995 AS INSTRUMENT NO. 239368 AND JULY 25, 1995 AS INSTRUMENT NO. 95-239369 OF OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN DEED FROM MARY H. TRAUTWEIN, ET AL, RECORDED NOVEMBER 19, 1959 IN BOOK 2584, PAGE 277 OF OFFICIAL RECORDS.

PARCEL NO.: 291-293-009

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

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, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

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**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

ATTACHMENT NO. 19

FORM OF RESIDUAL RECEIPTS REPORT

City of Moreno Valley  
(22889 Allies Place Affordable Housing Project)

Residual Receipts Report  
for the Year Ending \_\_\_\_\_

Date Prepared \_\_\_\_\_

Please complete the following information and execute the certification at the bottom of this form.

**Annual Project Revenue**

Please report Annual Project Revenue for the year ending \_\_\_\_\_ on the following lines:

Rent Payments received (including Section 8 tenant assistance payments, if any) (1) \$ \_\_\_\_\_

Interest Income (do **not** include interest income from replacement and operating reserves nor interest income on tenant security deposits) (2) \$ \_\_\_\_\_

Additional Income Related to Project Operations (for example, vending machine income, tenant forfeited deposits, laundry income not paid to the residents' association) (3) \$ \_\_\_\_\_

**Total Annual Project Revenue (Add lines 1, 2, and 3)** (4) \$ \_\_\_\_\_

**Operating Expenses<sup>1</sup>**

Please report Operating Expenses incurred in relation to the operations of the Project for the year ending \_\_\_\_\_, on the following lines:

Operating and Maintenance Expenses (5) \$ \_\_\_\_\_

Utilities (6) \$ \_\_\_\_\_

Property management Expenses and On-Site Staff Payroll (7) \$ \_\_\_\_\_

Administrative Expenses Incurred by Project (8) \$ \_\_\_\_\_

Property/Possessory Interest Taxes (9) \$ \_\_\_\_\_

Insurance (10) \$ \_\_\_\_\_

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING

Other Expenses Related to Operations of the Project (11) \$ \_\_\_\_\_  
 Please list these expenses: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Total Annual Operating Expenses** (12) \$ \_\_\_\_\_  
 (Add lines 5, 6, 7, 8, 9, 10, and 11)

**Net Operating Income (Subtract Line 12 from Line 4)** (13) \$ \_\_\_\_\_

<sup>1</sup> Do not include expense unrelated to the Project's operations, such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, or capital expenditures paid from withdrawals from the Capital Replacement Reserve.

**Additional Cash Flow Payments**

Obligated Debt Service Payments (as established under the Agreement for the Senior Note and the Second Note) (14) \$ \_\_\_\_\_

Scheduled Deposits to Capital and Operating Reserves (as approved by City) (15) \$ \_\_\_\_\_

Additional Payment Obligations (such as Partnership Related Fees, if any (to the extent allowable under the Agreement), Deferred Developer Fee, all as approved by the City) (16) \$ \_\_\_\_\_

**Total Additional Cash Flow Payments (Add lines 14, 15, and 16)** (17) \$ \_\_\_\_\_

**Residual Receipts for Year Ending** \_\_\_\_\_ (18) \$ \_\_\_\_\_  
 (Subtract Line 17 from Line 13)

**Percentage of Residual Receipts to be** (19) \_\_\_\_\_ %  
**Paid to City (under the Capital Recovery Note, 50% of Residual Receipts; Participant also to submit evidence that the remaining 50% of Residual Receipts to be available ultimately to Participant has not been paid prior to payment of all Residual Receipts payments due to City under the Agreement)**

**Amount Payable to City (Multiply Line 18 by Line 19)** (20) \$ \_\_\_\_\_

The amount payable to City listed on Line 20 is subject to payment according to the terms of the Agreement, including without limitation the Capital Recovery Note. If Line 20 is \$0.00 or negative, while you are required to make all payments required under the Senior Note and the Second Note as scheduled, you would not be required to make payment to the City for that year under the Capital Recovery Note. If Line 20 is a positive number, remit check payable to the City of Moreno Valley and attach to this report.

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



**Computation of Residual Receipts  
for the Year Ending \_\_\_\_\_**

**The following certification should be executed by the Executive Director or Chief Financial Officer of the Borrower, or the Managing General Partner of the Borrower.**

I certify that the information provided in this form is true, accurate, and correct in all respects.

\_\_\_\_\_

\_\_\_\_\_

Date

By: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_  
(Title)

Attachment: Affordable Housing Agreement, HOME, 22889 Allies Place [Revision 2] (1665 : ENTER INTO AFFORDABLE HOUSING



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Michelle Dawson, City Manager

**AGENDA DATE:** September 22, 2015

**TITLE:** UPDATE ON CROSSING GUARDS

---

### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council:**

1. Receive an update on discussions with Moreno Valley Unified School District regarding the crossing guard program and provide direction to staff.

### **SUMMARY**

This report provides a brief update on City staff's discussion with representatives from Moreno Valley Unified School District regarding the crossing guard program.

### **DISCUSSION**

At a joint meeting between the City of Moreno Valley and the Moreno Valley Unified School District (MVUSD) on June 15, 2015, the City's desire to transfer the cost of the existing crossing guard program to the District was discussed. The MVUSD Board agreed to the establishment of a task force or working group to discuss this item.

On July 7, 2015 the City Council determined that these discussions or negotiations would be conducted at the staff level and directed the City Manager to designate staff to meet with MVUSD.

City and MVUSD staff held a meeting on July 24, 2015. MVUSD reported that they were preparing a letter outlining their position regarding legal responsibilities related to students when they are not on school property. That letter was forwarded to the City Manager on July 27 and is attached for your information. The eight crossing guard locations that no longer meet traffic warrants were discussed. We also discussed the City Council's elimination of the funding for the School Resource Officer Sergeant position and suggested that MVUSD staff meet with the Police Chief to review impacts

of that action.

The City has requested a second meeting; we are awaiting a response from MVUSD staff.

**FISCAL IMPACT**

The annual cost to the City for the crossing guard program is approximately \$550,000 and is funded through gas tax revenues.

**PREPARATION OF STAFF REPORT**

Prepared By:  
Michelle Dawson  
City Manager

**CITY COUNCIL GOALS**

**Revenue Diversification and Preservation.** Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

**ATTACHMENTS**

- 1. MVUSD Letter of July 27, 2015

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/17/15 1:52 PM
City Attorney Approval	<u>✓ Approved</u>	9/17/15 1:55 PM
City Manager Approval	<u>✓ Approved</u>	9/17/15 2:34 PM



**Board of Education**  
 Gary E. Baugh, Ed.S., President  
 Cleveland Johnson, Vice President  
 Jesús M. Holguín, Clerk  
 Denise Fleming, Ed.D.  
 Patrick W. Kelleher

**Superintendent of Schools**  
 Judy D. White, Ed.D.

## **Moreno Valley Unified School District**

25634 Alessandro Boulevard  
 Moreno Valley, California 92553  
 951-571-7500  
 www.mvUSD.net

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*The mission of Moreno Valley Unified School District is to ensure all students graduate high school prepared to successfully enter into higher education and/or pursue a viable career path.*

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July 27, 2015

Ms. Michelle Dawson, City Manager  
 City of Moreno Valley  
 14177 Frederick Street  
 Moreno Valley, CA 92552

RE: Crossing Guard Services for Student/Community Safety

Dear Ms. Dawson,

I write you today on behalf of the Moreno Valley Unified School District ("District") to discuss an important community issue related to the public safety of many students that attend District schools within the City of Moreno Valley ("City"). As I hope you will agree, the education and safety of our youth should be a high ranking priority for both our agencies.

To date, the District has greatly appreciated the service of the City in providing crossing guard services for District students and other members of the community going to and from District schools. As you are likely aware, the schools within the City were designed to be "neighborhood" schools, where the majority of students can walk to school without the need for public or school-provided transportation. Of course, this means that large numbers of children and their parents/guardians travel along our City's busy streets within the vicinity of our schools shortly before and after school hours. In order to ensure the safety of our City's school-aged children, previous leaders of the City have provided crossing guard services at major intersections and other areas of risk, which the District recognizes has come at considerable expense to the City.

We understand from our recent discussions that the City is considering whether to continue these services, or eliminate them in order to realize cost savings. Some have suggested that, because crossing guards directly benefit members of the school community, the program should be the District's responsibility. I would like to reiterate that the duty to provide for the safe passage across streets is a municipal function applicable to the City, and that the District is interested in working with the City to ensure that this important function continues.

Although the District cares deeply about the safety and wellbeing of its students, California law makes it clear that the District generally is not responsible for the conduct or safety of students traveling to and from school, unless the District undertakes their transportation. Specifically, Education Code section 44808 states:

**Notwithstanding any other provision of this code, no school district, city or county board of education, county superintendent of schools, or any officer or employee of such district or board shall be responsible or in any way liable for the conduct or safety of any pupil of the**

Attachment: MVUSD Letter of July 27, 2015 (1675 : UPDATE ON CROSSING GUARDS)

Ms. Michelle Dawson  
 July 27, 2015  
 Page 2

**public schools at any time when such pupil is not on school property, unless such district, board, or person has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances.**

In the event of such a specific undertaking, the district, board, or person shall be liable or responsible for the conduct or safety of any pupil only while such pupil is or should be under the immediate and direct supervision of an employee of such district or board. As it relates to travel to and from school, this statute makes the District responsible for students only after they arrive on campus, unless the District assumes responsibility for them sooner; for example, by providing transportation or supervision. This is supported by relevant case-law. In *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, the court held that "crossing guards are a municipal obligation outside the responsibility of school districts," adding that crossing guards "provide essentially a police function in providing traffic control and enforcement of traffic." (*Id.* at 1360.)

In *Wright v. Arcade School Dist.* (1964) 230 Cal.App.2d 272, 277-78, the court held that cities are specifically authorized to spend traffic fine income to pay special school crossing guards. (Vehicle Code § 42200.) The *Wright* court concluded that "safety protection at street crossings outside school grounds is a municipal rather than school district function," adding that, "[n]owhere does the Education Code impose upon districts a statutory obligation to supply traffic protection to pupils en route between home and school."

The District is concerned that it will be asked to take on all responsibility for crossing guard services. The District believes, however, that the safety of school children is a community problem and must be shared by community agencies, city and school, in active cooperation for the common good.

Please know the District has nothing but respect and appreciation for the public safety services taken on by the brave members of the City's police department and other public safety workers. The District believes the coordination and management of crossing guard services (designed to ensure the safety and protection of the City's school aged children) are best managed by the City.

With this letter, the District seeks to ensure the City's leaders are aware of our desire to maintain the important crossing guard services provided by the City and to continue to collaborate with you to find a way to continue this important program.

We agreed to meet as a committee to study our mutual interest in the safety of our students. The meeting took place on Friday, July 24, 2015. Our Interim Chief Business Official was one of the seven City and District committee members present. She shared the restrictions on the District budget. We agreed as a team that a first step would be to agree that the eight areas that were no longer eligible for crossing guards due to the installation of signal lights could be reviewed for elimination of those specific crossing guards. It was also agreed that we will jointly explore safe routes to school grants as funding becomes available.

Attachment: MVUSD Letter of July 27, 2015 (1675 : UPDATE ON CROSSING GUARDS)

Ms. Michelle Dawson  
July 27, 2015  
Page 3

Knowing the many demands on your time, I am sure that I can speak for the District's students, parents, faculty and staff in thanking you for your time and attention to this important issue. I welcome the opportunity to discuss this matter.

Sincerely,



Judy D. White, Ed.D.  
Superintendent

JDW/ds

c: Board of Education

Attachment: MVUSD Letter of July 27, 2015 (1675 : UPDATE ON CROSSING GUARDS)



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Alia Rodriguez, Emergency Management Program Manager

**AGENDA DATE:** September 22, 2015

**TITLE:** EL NIÑO STORM PREPARATION STRATEGY PLAN AND EXPENDITURE AUTHORIZATION

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### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council:**

1. Approve the recommended El Niño Storm Preparation Strategy; and
2. Authorize the City Manager, or her designee, to appropriate and expend up to a maximum of \$1,500,000 for El Niño related preparation and response; and
3. Appropriate \$325,000 for immediate and upcoming labor, materials and equipment costs during the Preparedness/Mitigation Phase including:
  - a. Land Development Inspection Staff Cost - \$200,000
  - b. Materials - \$20,000
  - c. Equipment Rental - \$105,000

### **SUMMARY**

This report recommends approval of the first phase of the City's El Niño Storm Preparation Strategy which will be outlined below, and the expenditure of a maximum of \$1,500,000 for preparation and response, with an immediate appropriation of \$325,000 to support the City's commitment to be fully prepared for the predicted storm season.

### **DISCUSSION**

El Niño is a disruption of the ocean-atmosphere system in the Tropical Pacific having important consequences for weather and climate around the globe. The National Oceanic Atmospheric Administration (NOAA) reported that the El Niño storm of 1997-98 brought 13.68 inches of rain to the Los Angeles area in February 1998. The previous record February rainfall, standing since 1884, was 13.37 inches. Current NOAA



projections indicate a 95% chance that a strong El Niño will continue through winter 2015-16.

Per the City Manager's direction that Moreno Valley be the California city best prepared for the El Niño season, staff members from various City departments have developed an extensive, multi-phased approach to prepare for, and respond to, predicted storm events. The City has identified activities to be accomplished related to each of the following phases of the El Niño Storm Preparation Strategy Plan:

- Preparedness/Mitigation Phase
- Response Phase
- Recovery Phase

During the El Niño storm season it is anticipated that there will be multiple cycles of these three phases within each significant storm event throughout the winter. The City Manager has appointed the Office of Emergency Management, under Emergency Management Program Manager Alia Rodriguez, to coordinate the efforts of City Departments.

This staff report focuses on the Preparedness/Mitigation and Response phases. A copy of a more detailed planning document is attached to this report.

#### Preparedness/Mitigation Phase (Pre-El Niño Maintenance)

- City crews will proactively inspect and clean City-owned storm drain system facilities/infrastructure, focusing on known hazard areas.
- Council approval is sought for Municipal Code amendments to expand public nuisance definitions to allow the City to swiftly enforce required maintenance of private drainage courses to help limit damage caused by downstream water flow.
- City will inspect private drainage courses to assess maintenance requirements.
- City will advise private property owners of responsibilities for maintenance of private drainage courses.
- Emergency Management will coordinate ongoing efforts by Building and Safety, Community Development, Fire, Police, and Public Works Departments, and training outreach for City staff and volunteers.
- Multi-agency coordination efforts will include outreach and updates with public agencies.
- Public Outreach will also include single points of distribution for consistent messages and release of information as well as single point of contact for residents to submit damage and non-emergency assistance requests. The City's website will be used to provide preparedness information to residents, and relevant material will be sent to numerous Homeowner Associations in areas most susceptible to flooding.
- Public Works will procure an ongoing inventory of pre-filled sand bags that residents can obtain (free of cost) at multiple points in the City.

Costs associated with the overall Strategy are estimated at \$1,500,000. Of this total

projected amount, \$325,000 is needed to support immediate preparation activities. These costs are detailed below:

Land Development Inspection Temporary Staff (via contract)	\$200,000
Materials	\$20,000
Equipment Rental (Grader/Loader/Dump Trucks)	<u>\$105,000</u>
Total	\$325,000

The remaining projected budget will be required if conditions warrant, subject to the approval of the City Manager, consistent with the City Council expenditure approval of up to \$1,500,000. Related subsequent appropriations will be brought to Council for action/ratification as a budget adjustment.

Public Works staff members will inspect and maintain all City-owned storm drain facilities; the Department does not anticipate a need for additional support at this time. Land Development Inspection Staff, with the assistance of contract/consultant inspectors, will inspect private property drainage components during the Preparedness/Mitigation Phase. Materials such as pre-filled sandbags, additional barricades and flow reduction material will be purchased and staged for deployment.

### Response Phase

As with all storm events, City crews will provide the initial response to address hazardous situations in affected areas. Public Works will enter into Public-Private Partnerships (often referred to as P3 arrangements) with contractors who can provide on-call capacity to augment City crews as needed to address flooding conditions and conduct maintenance to the storm drain system.

The types of storm response activities for which Public Works, and its P3 contractors, will be prepared include:

- Storm Drain Cleaning (Vacuum Truck)
- Roadway Clearing - Mud/Debris Removal
- Slope Stabilization
- Street Reconstruction (Sinkhole/Pavement Collapse)
- Provision & Placement of Sandbags
- Provision & Placement of Rip Rap
- Provision & Placement of K-Rail
- Tree Trimming/Removal
- Water Removal/Pumping

- Concrete Reconstruction (Flatwork and/or Structure Damage)
- Culvert Reconstruction
- Clearing & Grubbing
- Grading
- Other emergency response/recovery work as required

### Future Activities

The City will continue to revise its El Niño Storm Preparation Strategy as conditions evolve and as new information becomes available.

It is also important to point out that the City Council's Finance Sub-Committee is exploring concepts -- to include P3 opportunities - - to upgrade and maintain the City's storm drain infrastructure. The concepts under study offer significant potential to bring long-needed enhancements to better protect all areas of the City from storm-related damage. The short-term strategies outlined in this report will, in no way, limit the options to be considered by the Council to address infrastructure improvement needs via the P3 concept.

### **ALTERNATIVES**

1. Approve the recommended El Niño Storm Preparation Strategy; authorize appropriation and expenditure of a maximum of \$1,500,000 for El Niño related storm preparation and response; and appropriate \$325,000 for immediate preparation expenditures. *This will allow the City to adopt a strategy to adequately prepare for an effective response to the multiple storm events anticipated with the upcoming El Niño season.*
2. Do not approve the recommended actions. *This would preclude the City from enhancing its ability to prepare for and respond to multiple storm events anticipated with the upcoming El Niño season.*

### **FISCAL IMPACT**

Costs associated with the overall Strategy are estimated at \$1,500,000. Of this total projected amount, \$325,000 is needed to support immediate preparation activities. The remaining projected budget will be required if conditions warrant, subject to the approval of the City Manager, consistent with the City Council expenditure approval of up to \$1,500,000. Related subsequent appropriations will be brought to Council for action/ratification as a budget adjustment.

The 2015-16 El Nino storm season is a non-routine event and consequently no funds have been previously budgeted during the City's current budget cycle. The City currently maintains a General Fund fund balance, which may be used to address certain emergency events, as needed. The FY 2015/16 adopted General Fund budget reflected a proposed surplus of approx. \$1 million. From this surplus, \$400,000 has

been proposed for the Dunlavy Court storm damage repairs and this additional \$325,000 will reduce the proposed FY 2015/16 General Fund surplus to approx. \$275,000.

Current Proposed Budget Adjustments

Fund	GL Account No.	Type (Rev/Exp)	FY 15/16 Budget	Proposed Adjustments	FY 15/16 Amended Budget
Gen Fund	1010-70-29-20410-xxxxxx	Exp	\$2,118,032	\$325,000	\$2,443,032

Costs related to the El Niño season events shall be additionally tracked through the use of project accounts. If an El Niño related event becomes eligible for reimbursement through the Federal Emergency Management Agency (FEMA), California Office of Emergency Services (Cal OES), or another available source, this process shall help facilitate any potential request for reimbursement. If any funds are received in the future, such funds may be applied to reimburse the General Fund.

Attachment: El Niño Preparedness Planning Document

**NOTIFICATION**

Listed on the City Council Agenda.

**PREPARATION OF STAFF REPORT**

Prepared By:  
Alia Rodriguez, Emergency Management Program Manager  
Robert Lemon, Maintenance & Operations Division Manager

Department Head Approval:  
Abdul Ahmad, Fire Chief

Concurred By:  
Marshall Eyeran  
Financial Resources Division Manager

Concurred By:  
Ahmad Ansari  
Public Works Director/City Engineer

**CITY COUNCIL GOALS**

**Public Safety.** Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

**Positive Environment.** Create a positive environment for the development of Moreno Valley's future.

**Community Image, Neighborhood Pride and Cleanliness.** Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

**ATTACHMENTS**

1. El Nino Storm Preparation Strategy 2015

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/17/15 11:01 AM
City Attorney Approval	<u>✓ Approved</u>	9/17/15 11:08 AM
City Manager Approval	<u>✓ Approved</u>	9/17/15 1:50 PM

# The City of Moreno Valley's El Niño Storm Preparation Strategy

Fire Department			
Task	Assigned to	Date	Comments
Pre-Flooding Meeting Coordination	OEM	09/03: PW, FD, PD, B&S 09/08: OEM, MVUSD, VVUSD 09/09: OEM, PW CM 09/10: OEM, PW, CM 09/16: PW, OEM, TS 09/21: OEM, MVUSD, VVUSD	-Kick-off <b>Completed</b> -MOU discussion <b>Completed</b> -Update to CM's Office <b>Completed</b> -Volunteer recruitment <b>Completed</b> -Update and TS needs <b>Completed</b> -Update
City Council Meeting	OEM/PW	Completed Completed 9/18	-Staff report re-assigned to Fire on 9/15. -Staff report completed and uploaded in MinuteTraQ on 9/16 -Power Point in draft from PW to Fire on 9/16. To be completed 9/18.
Radio Communications	OEM/Fire	10/01	-To discuss coordinating radio frequencies between RVC Fire and MoVal Local. Are RVC radios 800 MHz compatible? <b>Currently not an option. However, it is recommended that the City provide HT radios to the 7 engine companies, 1 truck company and 2 Battalion Chiefs prior to peak El Niño events.</b>
Financial Tracking	OEM/Finance	09/17	-Coordinate with Finance to develop financial tracking project codes (similar to Time and Materials) <b>Meeting with Finance on 09/17</b>
Community Outreach Alert Moval	OEM staff	On-going	-Alert Moval is currently on the City's website in multiple locations. Flyers were disbursed at the Youthfest <b>Completed and On-Going</b>
Public Reporting	OEM/PW	10/01	-Streamline the public reporting process by opening a Call Center in the EOC Media Room staffed with OEM and PW personnel. Staff from all affected depts. will need to be identified. -Calls can be triaged and responded to appropriately. -Utilizing the EOC Media Room, we have 5-10 phones connected on a redundant system with 10 lines on each phone -PW main line calls would just need to be forwarded -Reporting can be done via a simple excel spreadsheet or WebEOC -Identify the trigger points or staff as necessary based on rain prediction -Light training will need to be conducted in triaging requests for service (PW call vs. 911 call) <b>Meeting set for next Monday 09/21 with TS to conduct a needs assessment</b> <b>The EOC Media room will need to have: Computers; phones; push pin boards; radios (HT's- needs assessment will be conducted); white boards; maps; cell phone chargers; key card access for employees</b>

Attachment: El Nino Storm Preparation Strategy 2015 (1674 : EL NIÑO STORM PREPARATION STRATEGY

# The City of Moreno Valley's El Niño Storm Preparation Strategy

Damage Assessment Teams	OEM, PW, CD	On-going	-The assembly is under way for Damage Assessment Teams. -Identify key City staff for these teams <b>Pending</b> -Recruit and train volunteers to assist <b>Recruitment under way</b> -Develop a plan of assembly, deployment and transportation <b>60% completed</b> -Purchase necessary equipment (kits, safety gear, etc.) <b>Pending</b> -Training of volunteers <b>OEM volunteers receiving training on 9/17</b>
Volunteer Recruitment	OEM/Fire/PD/PW	09/15	- <b>Press release sent 09/16</b> -Utilization of PD and FD Explorers. Neither group can be left unsupervised. Fire may be more flexible to allow OEM staff to oversee. PD may have additional requirements being that they are law. <b>Fire is agreeable with supervision. Law Explorers can only be supervised by Officers with specified training. Will continue conversations for planned events.</b>
EOC/DOC Collaboration	OEM/Fire/PW		-Trigger points need to be identified for EOC/DOC activations <b>With the DOC being in the EOC Media room, it will be more coordinated should an EOC activation to occur.</b>
MOU's, MMA, Agreements	OEM		-MVUSD and VVUSD would like to see an MOU developed between them and the City for sharing of resources, access to their campus's kitchens, food trucks, personnel and equipment. <b>Pending</b>

## Public Works Department

### Maintenance: Storm Drain System Infrastructure

<u>Task</u>	<u>Assigned to</u>	<u>Date</u>	<u>Comments</u>
<b>Inspection/Cleaning of City Storm Drain Infrastructure</b> <b>*Project needs to be fast-tracked*</b>			
2400 City owned facilities	PW	10/15-10/31	-Estimated 50% of public storm drain infrastructure within City limits. -Hot spot locations: <b>est. 100% completion 10/31/15</b> -Open channels: <b>est. 100% complete by 10/15</b> -Channel structures: <b>est. 100% complete by 10/15</b> <b>Utilization of Fire Hand Crews pending</b>
Inspection/Cleaning of Non-City Storm Drain Infrastructures	PW, CP, City Attorney	On-going	-Coordination to request cleaning of observed problems with storm drain infrastructure maintained by other agencies <b>Primarily Riverside County Flood Control.</b>
<b>Private drainage storm maintenance</b>			
Advisory notification for 900+ private property parcels with 300+ private drainage courses	PW	Complete	<b>Notices sent on 9/8 with a compliance date of 9/30.</b>
Inspection of private drainage	PW	10/15	<b>Inspections to be conducted and completed by 10/15</b>

Attachment: El Nino Storm Preparation Strategy 2015 (1674 : EL NIÑO STORM PREPARATION STRATEGY



# The City of Moreno Valley's El Niño Storm Preparation Strategy

course			
Abatement of private drainage course	Code Enforcement, LD		<b>Additional steps may be required for private property owners.</b>
Installation of Permanent Signage for Flooding/Road Closure locations	Transportation, M&O	10/31	
<b>Enhancement-Storm Event Response</b>			
<b>Educational Outreach Program</b>			
Website Section – Preparation for El Niño	PW, OEM/Fire/TS	9/21	-Develop material for Media and Communications to add to website -Info fact sheet; links to City Depts.'; Non-City Dept.'s; How Do I section; etc. <b>Per TS, allow Webmaster 3 days lead time to configure new section; 1-2 days for changes/updates.</b> <b>Additional PR ideas: Creating a video (allow 7-10 days for creation); create a custom url for ease off public use; focus swap; email signature block</b>
MVTV – PowerPoint Slideshow	PW, OEM/Fire/TS	9/25	-M&O to develop PPT with input from FD, PD, B&S -Addition of maps -Tips, Responsibilities, Assistance Available/Not Available and Areas Subject to Flooding <b>Ensure it is simple, clear and concise. Lead time 1-2 days</b>
Toolkits for HOA's	CM		-Develop toolkits for the HOA's -So far, 34 HOA's info has been collected
District Forums for Residents	PW, OEM, FD, PD, B&S, CM		- Set up the forums for the various Council Districts. Assemble a panel, FD, PW, PD, B&S, and CM.
Waste Management Bill Advertisements	PW, CM		
GIS Map Layer	PW,TS		-Public/Private Roads/Drainage Courses) Made Available to Public via Website <b>PW would like utilize this app as a Pilot Program and continue beta testing through storm season</b>
<b>Resources and Coordination</b>			
Provision of Pre-Filled Sandbags Prior to and During Storm Season	PW, FD	10/1	-City Yard Event (similar to Household Hazardous Waste Events) <b>Fire Stations can hold 2-4 parking spaces worth of sandbags behind a secure gate. Must coordinate City staff or volunteers to be available when FF's are on incidents. Planned storm events will be easier to staff. We can designate times and advertise for public to pick up.</b> <b>-PW/Fire will also allow empty sandbags be held at Fire Stations and key</b>

Attachment: El Nino Storm Preparation Strategy 2015 (1674 : EL NIÑO STORM PREPARATION STRATEGY

# The City of Moreno Valley's El Niño Storm Preparation Strategy

			<p><b>City facilities</b></p> <ul style="list-style-type: none"> <li>-Sand will also be available at City Yard, CRC for public access</li> <li>-A press release will be drafted about sandbags and their availability</li> <li>-Additional temporary storage facility at City Yard</li> <li>-Need to identify a list of staff for recall list</li> </ul>
PW Emergency Response Staff	PW, Fire, CD	9/22	
Initiate Open Contracts - On-Call Contractors	PW	10/30/15	
Purchase of Additional Pumps	PW		
Auxiliary Equipment/Vehicle Rental	PW	10/1	
Riverside County Flood Control District (RCFCD) Mutual Aid Agreement	Fire	9/25	<b>To provide copy of Master Mutual Aid agreement via the SEMS/NIMS ordinance.</b>
<b>Sandbags</b>			
Sandbag Filling/Stacking	PW, FD	On-going/begin 10/1	<b>Interdepartmental coordination. Anticipated use of volunteers.</b>
Post-Event Recovery Efforts - Private Property	CD, FD	Pending incident	<b>B&amp;S 1-3 days at property owner's request</b>
Damage Assessment Teams	PW, FD, CD	Pending incident	
Utilization of M&O DOC (Divisional Operations Center) GIS Application	PW, TS	9/30	<b>Training on Storm Viewer Drill on Road Alert</b>
Establish Enforcement Mechanism for Private Drainage Courses	PW, CD, City Attorney	9/22	Ordinance
Establish Reimbursement Mechanism for Emergency Work On Private Drainage Courses/Property	PW, CD, City Attorney	Complete	Existing procedure
<b>Fast Track Permanent Infrastructure Improvements- Storm Drain System</b>			
<b>Interim Improvements</b>			
Dunlavy/Hubbard	PW	11/30	
Cedar Court/Cottonwood	PW	9/30	

Attachment: El Nino Storm Preparation Strategy 2015 (1674 : EL NIÑO STORM PREPARATION STRATEGY

# The City of Moreno Valley's El Niño Storm Preparation Strategy

Storm Drain Backbone Infrastructure			
Hubbard 72" Storm Drain Main	PW	12/31/16	

Attachment: El Nino Storm Preparation Strategy 2015 (1674 : EL NIÑO STORM PREPARATION STRATEGY



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Steve Quintanilla, Interim City Attorney

**AGENDA DATE:** September 22, 2015

**TITLE:** ORDINANCE EMERGENCY FLOODING – SINGLE SOURCE AND SOLE SOURCE

---

### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council:**

1. Introduce Ordinance No. 903. An Ordinance of the City Council of the City of Moreno Valley, California, which allows the City to purchase goods, materials, and services through single and/or sole sourcing in response to and in preparation of the impending threat of flooding which is anticipated to be caused by El Niño.

### **SUMMARY**

The Moreno Valley Municipal Code (“Municipal Code”) provides certain requirements and procedures for purchasing goods, materials and services, in Chapter 3.12 of the Municipal Code. The proposed ordinance provides the City with the express authority to dispense with such procedures and requirements in case of emergency due to flooding. Specifically, the proposed ordinance provides the City with the express authority to either sole source or award single source contracts, other than public works contracts, for goods, materials, and services in preparation of and in response to damage caused by flooding.

Additionally, the proposed ordinance details the procedures promulgated by the State, in Section 22050 of the Public Contract Code, which allows cities to dispense with the requirements that cities provide notice for bids to let public works contracts in cases of emergencies.

### **PREPARATION OF STAFF REPORT**

Prepared By:

Name Steven B. Quintanilla  
Title Interim City Attorney

Concurred By:  
Name Chris Paxton  
Title Administrative Services Director

**CITY COUNCIL GOALS**

None

**ATTACHMENTS**

- 1. 5001 - Companion Ordinance Emergency Flooding (09 15 15)

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/16/15 7:56 AM
City Attorney Approval	<u>✓ Approved</u>	9/16/15 8:35 AM
City Manager Approval	<u>✓ Approved</u>	9/16/15 2:03 PM

## ORDINANCE NO. 903

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, ADDING SECTION 3.12.340 TO CHAPTER 3.12 PURCHASING OF TITLE 3 REVENUE AND FINANCE OF THE MORENO VALLEY MUNICIPAL CODE ADOPTING PROCEDURES FOR SINGLE AND SOLE SOURCING IN PREPARATION OF AND IN RESPONSE TO FLOODING

**WHEREAS**, Chapter 3.12, “PURCHASING,” of the Moreno Valley Municipal Code sets forth general requirements applicable to the City of Moreno Valley’s purchasing procedures for goods and services; and

**WHEREAS**, Section 3.12.080, “General – Single and Sole Source,” generally provides when single or sole sourcing may be permitted, along with certain requirements the City of Moreno Valley (“City”) must abide by when single or sole sourcing, while expressly providing that the section is not applicable to public works projects except as permitted by state law; and

**WHEREAS**, Section 3.12.250, “Materials, supplies and equipment – Waiver of formal bid procedures,” generally allows the City to dispense of formal bid procedures under times of emergency; and

**WHEREAS**, Section 3.12.010, “Definitions,” defines “Emergency” as the existence or threatened existence of conditions of extreme peril to the safety of persons and property within the City that may vitally affect the life, health or convenience of citizens; and

**WHEREAS**, Section 3.12.010, “Definitions,” defines “Single Source” as “a contract for the purchase of goods or services entered into after soliciting and negotiating only with one source, usually because of the technology required or uniqueness of the product or service provided”; and

**WHEREAS**, Section 3.12.010, “Definitions,” defines “Sole source” as a circumstance where “only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, matching to currently owned equipment or supplies, the ability to deliver at a particular time, or services from a public utility”; and

**WHEREAS**, the City desires to amend the Municipal Code in light of the impending threat of El Niño in order to allow the City to single and sole source for certain goods, materials, and services, in accordance with State law, and in order to allow the City to more effectively and efficiently respond to and prepare for flooding which is expected to be caused by El Niño; and

**WHEREAS**, experts predict that there is a ninety (90) percent chance El Niño conditions will continue through the winter of 2015 and an eighty (80) percent chance that it will continue into the Spring of 2016; and

**WHEREAS**, the National Weather Service's Climate Prediction Center said that this El Niño is shaping up to be as strong as the 1997-98 El Niño, which resulted in storms that killed seventeen (17) people and caused more than half a billion dollars in damage in California; and

**WHEREAS**, Public Contract Code Section 22050 allows cities to dispense with the requirement that cities provide notice for bids to let public works contracts.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY DOES ORDAIN AS FOLLOWS:

**SECTION 1. RECITALS**

That the above recitals are true and correct and are incorporated as though fully set forth herein.

**SECTION 2. AMENDMENT OF TITLE 3 REVENUE AND FINANCE OF THE MUNICIPAL CODE ADDING SECTION 3.12.340 EMERGENCY FLOODING – SINGLE SOURCE AND SOLE SOURCE TO CHAPTER 3.12 PURCHASING**

That Section 3.12.340 Emergency flooding – Single source and sole source, is hereby added to Chapter 3.12 PURCHASING, as follows:

**Section 3.12.340 Emergency flooding – Single source and sole source.**

**(a) Non-Public Works Contracts. In the event of an emergency caused or to be caused by flood, storm, or similar disaster that poses or is about to pose a serious threat to the public safety, as determined by the City Manager, the Mayor or City Manager may order the suspension of normal bidding or purchasing requirements otherwise required in this Chapter 3.12, and allow for single and sole sourcing procurements.**

**(b) Public Works Contracts. In case of an emergency, the City Council may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts, upon the passing of a resolution by a four-fifths vote of the City Council declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, it may expend any sum required by the emergency, pursuant to and in compliance with Public Contract Code Section 22050. The City Council**



**may pass a resolution by four-fifths vote to delegate to the City Manager, the authority to order any action pursuant to this section.**

**SECTION 3. SEVERABILITY**

That the City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

**SECTION 4. REPEAL OF CONFLICTING PROVISIONS**

That all the provisions of the Municipal Code as heretofore adopted by the City of Moreno Valley that are in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 5. EFFECTIVE DATE**

That this ordinance shall take effect thirty (30) days after its second reading.

**SECTION 6. CERTIFICATION**

That the City Clerk shall certify to the adoption of this ordinance and cause the same to be published according to law.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

APPROVED AND ADOPTED this 22<sup>nd</sup> day of September, 2015.

Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

N:\MOVA\01-01 General Matters\DOC\5001 - Companion Ordinance Emergency Flooding (09 14 15).docx

Attachment: 5001 - Companion Ordinance Emergency Flooding (09 15 15) [Revision 1] (1670 : ORDINANCE EMERGENCY FLOODING ? SINGLE

**ORDINANCE JURAT**

STATE OF CALIFORNIA    )  
COUNTY OF RIVERSIDE   ) ss.  
CITY OF MORENO VALLEY)

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, do hereby certify that Ordinance No. 903 had its first reading on September 22, 2015 and had its second reading on September 8, 2015, and was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the 22<sup>nd</sup> day of September, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

\_\_\_\_\_  
CITY CLERK

(SEAL)



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Ahmad R. Ansari, P.E., Public Works Director/City Engineer

**AGENDA DATE:** September 22, 2015

**TITLE:** INTRODUCE ORDINANCE NO. 904. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, AMENDING SECTION 6.04.040 OF CHAPTER 6.04 OF THE MORENO VALLEY MUNICIPAL CODE RELATING TO PUBLIC NUISANCES

---

### **RECOMMENDED ACTION**

#### **Recommendation: That the City Council:**

1. Introduce Ordinance No. 904. An Ordinance of the City Council of the City of Moreno Valley, California, amending section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code relating to Public Nuisances.

### **SUMMARY**

This item recommends introduction of Ordinance No. 904. An Ordinance of the City Council of the City of Moreno Valley, California, amending section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code relating to Public Nuisances.

### **DISCUSSION**

At the City Council Study Session of July 1, 2014, City Council concurred and provided direction for the implementation of the Private Drainage Channel Maintenance Notification and Inspection Program. Per the current program, the Public Works Department implemented the following procedures to occur annually:

- Mailing the First Watercourse Maintenance Advisory Notice by the Land Development Division to all property owners with parcels containing a portion of a private drainage channel. These letters will be sent in advance of the typical rainy season.

- Mailing the second Watercourse Maintenance Advisory Notice by the Land Development Division to a subset of property owners with parcels that have a demonstrated history of private drainage channel breaching and flooding. As additional support, the Maintenance & Operations Division staff will provide inspections upon request of property owners seeking guidance on efforts necessary to achieve voluntary compliance.
- Mailing a Watercourse Maintenance Inquiry Letter by the Maintenance and Operations Division to property owners for complaints received. These letters reference the prior advisory letters and request that the property owner contact the Maintenance and Operations Division with a plan of action and timeframe for maintenance.

The current program is advisory in nature and relies upon voluntary compliance; not on mandatory action, enforcement, or abatement of an issue that is regarded as a private nuisance. In order to proactively address potential flooding concerns and to enforce compliance with the program, City staff proposes that Code Compliance be involved with the following modified procedure:

- Land Development Division: Mailing the first Watercourse Maintenance Advisory Notice to all property owners with parcels containing a portion of a private drainage channel. These letters will be sent in advance of the typical rainy season.
  - Land Development will provide proactive inspection of private drainage courses (subject to funding/staffing requirements) and communication of non-compliance to Code Compliance Division.
  - Code Compliance: Initiation of a Nuisance Abatement case.
  - Code Compliance: Contractor abatement of non-compliance properties (subject to funding and staffing requirements, environmental clearance work and contractor abatement work). Cost recovery for abatement shall be pursued.
  - Maintenance & Operations will provide emergency abatement of flooding related to private drainage courses during an actual emergency event in which an imminent threat exists to life and/or property and in which such emergency action may mitigate such threat (no proactive private property or post-event recovery efforts are included). Cost recovery for emergency response shall be pursued.
- The goals of the modified program are:
- Ensuring that the City has performed its due diligence in advising property owners of the necessity of private drainage channel maintenance to minimize any potential flood and/or damage from rain storms and the potential private liability issues that exist should they not perform adequate maintenance.

- Directing property owners to contact the appropriate regulatory agencies for concerns, guidance, and/or permits related to any maintenance activities that they undertake that may involve protected waters of the United States, riparian habitat, or streambed alteration activities.
- Ensuring that Code Compliance can provide citation to the public nuisance cases and provide efficient enforcement.
- Preserving the ability of City forces to perform an emergency abatement during or immediately preceding a storm event that poses or threatens to pose an immediate threat to life or property.

In order to incorporate the Code Compliance component to the Private Drainage Channel Advisory Program, the new Ordinance to amend Section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code, Declaration of Nuisances is required to include all potential scenarios of public nuisances. The following is being added to Section 6.04.040(E):

7. Any alteration to the alignment of a natural or developed drainage course, culvert, device, facility, improvement or system designed to convey stormwater runoff (“drainage system”) or any drainage system which contains:
- a. any blockage or damming which prevents the continuous and unimpeded flow of stormwater;
  - b. any vegetation not approved as part of the original design of the drainage system;
  - c. an accumulation of sediment which alters the elevation of the natural, designated or approved flow of stormwater;
  - d. any junk, trash, debris, items or materials not approved as part of the original design of the drainage system; or
  - e. any modification to the original approved design of a drainage system that restricts, impedes or reduces the natural or designed flow of the drainage system.

## **ALTERNATIVES**

1. **Adopt** Ordinance No. 904. This alternative will provide for the enforcement of the Private Drainage Channel Advisory Program through the public nuisance process.
2. **Do not adopt** Ordinance No. 904. This alternative will not amend Section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code and will result in no enforcement of the Private Drainage Channel Advisory Program.

## **FISCAL IMPACT**

Based upon the current advisory and voluntary compliance model, minimal costs are incurred and these costs are absorbed within existing operational budgets. Should the City choose to implement the Code Compliance model which requires inspection and enforcement to ensure the proper maintenance of the private watercourse channels by property owners, additional expenditures may be necessary dependent upon the specific nature of the enforcement and abatement program. In addition, the City may collect costs and expenses involved in abating the nuisance.

**NOTIFICATION**

Publication of agenda.

**PREPARATION OF STAFF REPORT**

Prepared by:  
Henry Ngo,  
Interim Engineering Division Manager

Department Head Approval:  
Ahmad Ansari,  
Public Works Director/City Engineer

Concurred by:  
Robert Lemon,  
Maintenance and Operation Division Manager

Concurred by:  
Allen D. Brock,  
Community Development Director

(Optional field) Reports requiring inter-departmental coordination must include names of all affected department heads.

**CITY COUNCIL GOALS**

None

**ATTACHMENTS**

- 1. Ordinance No. 904 - Stormwater Nuisance

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/11/15 9:54 AM
City Attorney Approval	<u>✓ Approved</u>	9/15/15 2:19 PM
City Manager Approval	<u>✓ Approved</u>	9/15/15 2:23 PM



## ORDINANCE NO. 904

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, AMENDING SECTION 6.04.040 OF CHAPTER 6.04 OF THE MORENO VALLEY MUNICIPAL CODE RELATING TO PUBLIC NUISANCES

The City Council of the City of Moreno Valley does ordain as follows:

SECTION 1. AMENDMENT OF MUNICIPAL CODE:

Section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code is hereby amended to read as follows:

“6.04.040 Declaration of nuisances.

It is unlawful and is declared a nuisance for any responsible person in the city to maintain or allow another to maintain, or fail to maintain any of the following conditions:

A. Buildings, structures, facilities, equipment, devices or improvements:

1. Maintained in violation of any provision of any comprehensive or uniform building, plumbing, electrical, housing, mechanical or fire code as adopted by the city or enacted by the state of California and codified in the California State Codes or within the California Code of Regulations;

2. Maintained in violation of any provision of Title 9 of this code, including, but not limited to, prohibited uses, setback violations, development standards and sign regulations;

3. Which have been abandoned, vacated, boarded up, partially destroyed, or left in a state of partial construction or repair for a period exceeding ninety (90) days, or and have become accessible to unauthorized persons including, but not limited to, juveniles, vagrants or persons engaged in illegal, hazardous, drug or gang activity;

4. Which have become defective, unsightly, or in such a condition of deterioration or disrepair as the same may cause depreciation of the property values to surrounding properties;

5. Upon which the condition of the exterior coating has become so deteriorated as to permit decay, excessive checking, cracking, dry rot, termite infestation, broken windows or warping;

6. With graffiti or other words, lettering or drawings not otherwise permitted by the provisions of this code, state or federal law on visible or exterior surfaces;

7. Without a connection to a sewer disposal system or sanitary sewer if occupied or with any leaking seeping sewage;

8. Without a connection to a permanent electrical service if occupied and such service is available within three hundred (300) feet of the occupied building or structure.

9. Without hot water, running water, adequate heating, and electricity if occupied;

10. Constructed in violation of any state or local law or regulation relating to the condition, use or maintenance of buildings.

B. Outdoor storage or maintenance of the following:

1. Abandoned, damaged or broken equipment, machinery, household items or appliances;

2. Refuse, rubbish, scrap metal, appliances, shopping carts, wood, plant cuttings, broken or discarded furniture or household equipment, junk, trash or debris, parts, cans, boxes or containers;

3. Garbage or trash containers stored in a manner so as to be visible from public rights-of-way, except when in places of collections and at times for collection as permitted in this code;

4. Any hazardous substance or waste product, including, but not limited to biological material, oil, gasoline, automotive fluids, and household chemicals not lawfully stored or which has been discharged, released, placed or deposited upon any premises or onto any public property;

5. Construction materials, equipment or machinery in any front yard, front setback or driveway in a residential zone;

6. Any materials that are stored or stacked in a manner in which the materials could be discharged into a storm drain system.

C. Landscaping, vegetation, or improved or unimproved property in any of the following conditions:

1. Property, including any sidewalks and parkways adjacent thereto, containing weeds, dry grasses, dead trees, dead shrubs, or any other material which bears seeds of a wingy or downy nature or which by reason of their size, manner of growth or location, constitute a fire hazard or a threat to public health, or containing weeds, vegetation, grasses, trees or shrubs, including, but not limited to sagebrush, chaparral, and Russian Thistle (tumbleweed) which, when dry, will in reasonable probability constitute a fire hazard or be blown onto adjoining property by prevailing winds;

2. Containing stagnant or standing water, refuse, rubbish, offal, excrement or other waste materials which emit an odor;

3. Unimproved surfaces of front and visible side yards not completely landscaped and covered with any combination of ground cover consisting of live plant

materials, decorative rock, redwood bark, and/or mulch as long as such covering is consistent with any existing land use approvals, permits, entitlements, contracts or environmental document relating to the property;

4. Trees and shrubs containing dead or fallen limbs or branches that may present a safety hazard;

5. Trees or shrubs which are overgrown or contain limbs or branches that restrict, impede or obstruct the use of or obscure the visibility of pedestrians or drivers using the public right-of-ways, easements, sidewalks or roadways;

6. Overgrown vegetation likely to harbor vermin, insects or rodents of any kind;

7. Not conforming to any requirement set forth in any zoning or land use approval, permit, entitlement, contract or environmental document relating to the property.

D. Vehicles stored, parked, used or maintained in any of the following manners:

1. To allow or perform the maintenance, repair, restoration, painting, body work or dismantling of any vehicle, equipment or parts thereof on the exterior portion of any residential property. This prohibition shall not apply to work specifically authorized by state or local law or regulation, and shall not apply to minor repair or maintenance of vehicles which are registered to the person residing on the property and such repairs or maintenance are not conducted outside for longer than seventy-two (72) consecutive hours;

2. Parked or stored on unimproved surfaces;

3. Encroaching onto or over any pedestrian pathway or sidewalk or which restrict, impede or obstruct the use of or obscure the visibility of pedestrians or drivers using the public right-of-ways, easements, sidewalks or roadways;

4. With accumulations of debris, leaves, weeds or other materials in the areas around and under the vehicle;

5. As residential living space or occupancy, including, but not limited to, sleeping, cooking, dining, or bathing;

6. Inoperable, abandoned, wrecked, or dismantled vehicles or parts thereof not stored entirely within an enclosed building.

E. Property containing any of the following:

1. Wells, swimming pools, spas, ponds or excavations containing water or any other liquid in excess of twenty-four (24) inches in depth at any point and exceeding five thousand (5,000) gallons in capacity which are unfenced or otherwise unprotected with a barrier at least five (5) feet in height;

2. Any device, equipment, instrument, vehicle, machinery or animal which creates a loud or unusual noise in violation of Chapter 11.80 of this code;
3. Any hazard to the public obstructing the use of or obscuring the visibility of pedestrians or drivers using the public right-of-ways, easements, sidewalks or roadways, including, but not limited to, walls, fences, shrubs, trees, vehicles or structures;
4. Walkways, driveways, parking lots and other improved surfaces in a deteriorated or unsafe condition or with fading required striping or markings;
5. An infestation of termites, insects, vermin, rodents or other pests;
6. The display or placement upon any fence, wall, tree, bush or any other structure, or portion thereof, of any linens, rugs, fabrics, nylon, or any other item of clothing or similar items except upon a recognized clothes line facility not located in the front yard;
7. Any alteration to the alignment of a natural or developed drainage course, culvert, device, facility, improvement or system designed to convey stormwater runoff ("drainage system") or any drainage system which contains:
  - a. any blockage or damming which prevents the continuous and unimpeded flow of stormwater;
  - b. any vegetation not approved as part of the original design of the drainage system;
  - c. an accumulation of sediment which alters the elevation of the natural, designated or approved flow of stormwater;
  - d. any junk, trash, debris, items or materials not approved as part of the original design of the drainage system; or
  - e. any modification to the original approved design of a drainage system that restricts, impedes or reduces the natural or designed flow of the drainage system.
8. Any attractive nuisance;
9. Any condition which creates a detriment or hazard to the public health, safety or general welfare as to constitute a public nuisance as defined by California Civil Code Section 3480, California Health & Safety Code Section 11570, California Penal Code Section 11225, or California Government Code Section 39561."

## SECTION 2. EFFECT OF ENACTMENT:

Except as specifically provided herein, nothing contained in this ordinance shall be deemed to modify or supersede any prior enactment of the City Council which addresses the same subject addressed herein.

SECTION 3. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

SECTION 4. REPEAL OF CONFLICTING PROVISIONS

All the provisions of the Municipal Code as heretofore adopted by the City of Rancho Mirage that are in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. NOTICE OF ADOPTION:

Within fifteen days after the date of adoption hereof, the City Clerk shall certify to the adoption of this ordinance and cause it to be posted in three public places within the city.

SECTION 6. EFFECTIVE DATE:

This ordinance shall take effect thirty days after the date of its adoption.

SECTION 7. CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ORDINANCE JURAT**

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF MORENO VALLEY )

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, do hereby certify that Ordinance No. 904 had its first reading on September 22, 2015 and had its second reading on October 13, 2015, and was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the 13<sup>th</sup> day of October, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

\_\_\_\_\_  
CITY CLERK

(SEAL)



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Ahmad R. Ansari, P.E., Public Works Director/City Engineer

**AGENDA DATE:** September 22, 2015

**TITLE:** ADOPT URGENCY ORDINANCE NO. 905. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, AMENDING SECTION 6.04.040 OF CHAPTER 6.04 OF THE MORENO VALLEY MUNICIPAL CODE RELATING TO PUBLIC NUISANCES

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### **RECOMMENDED ACTION**

#### **Recommendation: That the City Council:**

1. Adopt Urgency Ordinance No. 905. An Ordinance of the City Council of the City of Moreno Valley, California, amending section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code relating to Public Nuisances.

### **SUMMARY**

This item recommends adoption of Urgency Ordinance No. 905. An Ordinance of the City Council of the City of Moreno Valley, California, amending section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code relating to Public Nuisances.

### **DISCUSSION**

At the City Council Study Session of July 1, 2014, the City Council concurred and provided direction for the implementation of the Private Drainage Channel Maintenance Notification and Inspection Program. Per the current program, the Public Works Department implemented the following procedures to occur annually:

- Mailing the First Watercourse Maintenance Advisory Notice by the Land Development Division to all property owners with parcels containing a portion of a private drainage channel. These letters will be sent in advance of the typical rainy season.

- Mailing the second Watercourse Maintenance Advisory Notice by the Land Development Division to a subset of property owners with parcels that have a demonstrated history of private drainage channel breaching and flooding. As additional support, the Maintenance & Operations Division staff will provide inspections upon request of property owners seeking guidance on efforts necessary to achieve voluntary compliance.
- Mailing a Watercourse Maintenance Inquiry Letter by the Maintenance and Operations Division to property owners for complaints received. These letters reference the prior advisory letters and request that the property owner contact the Maintenance and Operations Division with a plan of action and timeframe for maintenance.

The current program is advisory in nature and relies upon voluntary compliance; not on mandatory action, enforcement, or abatement of an issue that is regarded as a private nuisance. In order to proactively address potential flooding concerns and to enforce compliance with the program, City staff proposes that Code Compliance be involved with the following modified procedure:

- Land Development Division: Mailing of the first Watercourse Maintenance Advisory Notice to all property owners with parcels containing a portion of a private drainage channel. These letters are sent in advance of the typical rainy season.
  - Land Development will provide proactive inspection of private drainage courses (subject to funding/staffing requirements) and communication of non-compliance to Code Compliance Division.
  - Code Compliance: Initiation of a Nuisance Abatement case.
  - Code Compliance: Contractor abatement of non-compliance properties (subject to funding and staffing requirements, environmental clearance work and contractor abatement work). Cost recovery for abatement shall be pursued.
  - Maintenance & Operations will provide emergency abatement of flooding related to private drainage courses during an actual emergency event in which an imminent threat exists to life and/or property and in which such emergency action may mitigate such threat (no proactive private property or post-event recovery efforts are included). Cost recovery for emergency response shall be pursued.
- The goals of the modified program are:
- Ensuring that the City has performed its due diligence in advising property owners of the necessity of private drainage channel maintenance to minimize any potential flood and/or damage from rain storms and the potential private liability issues that exist should they not perform adequate maintenance.



- Directing property owners to contact the appropriate regulatory agencies for concerns, guidance, and/or permits related to any maintenance activities that they undertake that may involve protected waters of the United States, riparian habitat, or streambed alteration activities.
- Ensuring that Code Compliance can provide citation to the public nuisance cases and provide efficient enforcement.
- Preserving the ability of City forces to perform an emergency abatement during or immediately preceding a storm event that poses or threatens to pose an immediate threat to life or property.

In order to incorporate the Code Compliance component to the Private Drainage Channel Advisory Program, the new Ordinance amending Section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code, Declaration of Nuisances is required to include all potential scenarios of public nuisances. The following is being added to Section 6.04.040(E):

7. Any alteration to the alignment of a natural or developed drainage course, culvert, device, facility, improvement or system designed to convey stormwater runoff (“drainage system”) or any drainage system which contains:
- a. any blockage or damming which prevents the continuous and unimpeded flow of stormwater;
  - b. any vegetation not approved as part of the original design of the drainage system;
  - c. an accumulation of sediment which alters the elevation of the natural, designated or approved flow of stormwater;
  - d. any junk, trash, debris, items or materials not approved as part of the original design of the drainage system; or
  - e. any modification to the original approved design of a drainage system that restricts, impedes or reduces the natural or designed flow of the drainage system.

## **ALTERNATIVES**

1. **Adopt** URGENCY Ordinance No. 905. This alternative will provide for the enforcement of the Private Drainage Channel Advisory Program through the public nuisance process.
2. **Do not adopt** URGENCY Ordinance No. 905. This alternative will not amend Section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code and will result in no enforcement of the Private Drainage Channel Advisory Program.

## **FISCAL IMPACT**

Based upon the current advisory and voluntary compliance model, minimal costs are incurred and these costs are absorbed within existing operational budgets. Should the City choose to implement the Code Compliance model that requires inspection and enforcement to ensure the proper maintenance of the private watercourse channels by property owners, additional expenditures may be necessary dependent upon the specific nature of the enforcement and abatement program. In addition, the City may collect costs and expenses involved in abating a nuisance.

**NOTIFICATION**

Publication of agenda.

**PREPARATION OF STAFF REPORT**

Prepared by:  
Henry Ngo,  
Interim Engineering Division Manager

Department Head Approval:  
Ahmad Ansari,  
Public Works Director/City Engineer

Concurred by:  
Robert Lemon,  
Maintenance and Operation Division Manager

Concurred by:  
Allen D. Brock,  
Community Development Director

**CITY COUNCIL GOALS**

None

**ATTACHMENTS**

- 1. Ordinance - Urgency Stormwater Nuisance

**APPROVALS**

Budget Officer Approval	<u>✓ Approved</u>	9/14/15 3:32 PM
City Attorney Approval	<u>✓ Approved</u>	9/15/15 5:06 PM
City Manager Approval	<u>✓ Approved</u>	9/15/15 5:21 PM

## ORDINANCE NO. 905

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MORENO VALLEY, CALIFORNIA,  
AMENDING SECTION 6.04.040 OF CHAPTER 6.04 OF  
THE MORENO VALLEY MUNICIPAL CODE RELATING TO  
PUBLIC NUISANCES

WHEREAS, the City Council finds that the lack of maintenance to privately owned drainage facilities located within the City of Moreno Valley contributes to a public nuisance that endangers the public peace, health and safety.

WHEREAS, the failure to maintain drainage facilities within the City of Moreno Valley contributes to flooding and damage to private and public property.

WHEREAS, weather predictions of an imminent "El Nino" season expecting large amounts of rainfall make it necessary to begin the monitoring, cleaning, maintenance and abatement of unmaintained drainage courses before the significant rainfall commences.

NOW, THEREFORE, The City Council of the City of Moreno Valley does ordain as follows:

SECTION 1. AMENDMENT OF MUNICIPAL CODE:

Section 6.04.040 of Chapter 6.04 of the Moreno Valley Municipal Code is hereby amended to read as follows:

"6.04.040 Declaration of nuisances.

It is unlawful and is declared a nuisance for any responsible person in the city to maintain or allow another to maintain, or fail to maintain any of the following conditions:

- A. Buildings, structures, facilities, equipment, devices or improvements:
  1. Maintained in violation of any provision of any comprehensive or uniform building, plumbing, electrical, housing, mechanical or fire code as adopted by the city or enacted by the state of California and codified in the California State Codes or within the California Code of Regulations;
  2. Maintained in violation of any provision of Title 9 of this code, including, but not limited to, prohibited uses, setback violations, development standards and sign regulations;
  3. Which have been abandoned, vacated, boarded up, partially destroyed, or left in a state of partial construction or repair for a period exceeding ninety (90) days, or and have become accessible to unauthorized persons including, but not limited to, juveniles, vagrants or persons engaged in illegal, hazardous, drug or gang activity;

4. Which have become defective, unsightly, or in such a condition of deterioration or disrepair as the same may cause depreciation of the property values to surrounding properties;

5. Upon which the condition of the exterior coating has become so deteriorated as to permit decay, excessive checking, cracking, dry rot, termite infestation, broken windows or warping;

6. With graffiti or other words, lettering or drawings not otherwise permitted by the provisions of this code, state or federal law on visible or exterior surfaces;

7. Without a connection to a sewer disposal system or sanitary sewer if occupied or with any leaking seeping sewage;

8. Without a connection to a permanent electrical service if occupied and such service is available within three hundred (300) feet of the occupied building or structure.

9. Without hot water, running water, adequate heating, and electricity if occupied;

10. Constructed in violation of any state or local law or regulation relating to the condition, use or maintenance of buildings.

B. Outdoor storage or maintenance of the following:

1. Abandoned, damaged or broken equipment, machinery, household items or appliances;

2. Refuse, rubbish, scrap metal, appliances, shopping carts, wood, plant cuttings, broken or discarded furniture or household equipment, junk, trash or debris, parts, cans, boxes or containers;

3. Garbage or trash containers stored in a manner so as to be visible from public rights-of-way, except when in places of collections and at times for collection as permitted in this code;

4. Any hazardous substance or waste product, including, but not limited to biological material, oil, gasoline, automotive fluids, and household chemicals not lawfully stored or which has been discharged, released, placed or deposited upon any premises or onto any public property;

5. Construction materials, equipment or machinery in any front yard, front setback or driveway in a residential zone;

6. Any materials that are stored or stacked in a manner in which the materials could be discharged into a storm drain system.

C. Landscaping, vegetation, or improved or unimproved property in any of the following conditions:

1. Property, including any sidewalks and parkways adjacent thereto, containing weeds, dry grasses, dead trees, dead shrubs, or any other material which bears seeds of a wingy or downy nature or which by reason of their size, manner of growth or location, constitute a fire hazard or a threat to public health, or containing weeds, vegetation, grasses, trees or shrubs, including, but not limited to sagebrush, chaparral, and Russian Thistle (tumbleweed) which, when dry, will in reasonable probability constitute a fire hazard or be blown onto adjoining property by prevailing winds;

2. Containing stagnant or standing water, refuse, rubbish, offal, excrement or other waste materials which emit an odor;

3. Unimproved surfaces of front and visible side yards not completely landscaped and covered with any combination of ground cover consisting of live plant materials, decorative rock, redwood bark, and/or mulch as long as such covering is consistent with any existing land use approvals, permits, entitlements, contracts or environmental document relating to the property;

4. Trees and shrubs containing dead or fallen limbs or branches that may present a safety hazard;

5. Trees or shrubs which are overgrown or contain limbs or branches that restrict, impede or obstruct the use of or obscure the visibility of pedestrians or drivers using the public right-of-ways, easements, sidewalks or roadways;

6. Overgrown vegetation likely to harbor vermin, insects or rodents of any kind;

7. Not conforming to any requirement set forth in any zoning or land use approval, permit, entitlement, contract or environmental document relating to the property.

D. Vehicles stored, parked, used or maintained in any of the following manners:

1. To allow or perform the maintenance, repair, restoration, painting, body work or dismantling of any vehicle, equipment or parts thereof on the exterior portion of any residential property. This prohibition shall not apply to work specifically authorized by state or local law or regulation, and shall not apply to minor repair or maintenance of vehicles which are registered to the person residing on the property and such repairs or maintenance are not conducted outside for longer than seventy-two (72) consecutive hours;

2. Parked or stored on unimproved surfaces;

3. Encroaching onto or over any pedestrian pathway or sidewalk or which restrict, impede or obstruct the use of or obscure the visibility of pedestrians or drivers using the public right-of-ways, easements, sidewalks or roadways;

4. With accumulations of debris, leaves, weeds or other materials in the areas around and under the vehicle;

5. As residential living space or occupancy, including, but not limited to, sleeping, cooking, dining, or bathing;
  6. Inoperable, abandoned, wrecked, or dismantled vehicles or parts thereof not stored entirely within an enclosed building.
- E. Property containing any of the following:
1. Wells, swimming pools, spas, ponds or excavations containing water or any other liquid in excess of twenty-four (24) inches in depth at any point and exceeding five thousand (5,000) gallons in capacity which are unfenced or otherwise unprotected with a barrier at least five (5) feet in height;
  2. Any device, equipment, instrument, vehicle, machinery or animal which creates a loud or unusual noise in violation of Chapter 11.80 of this code;
  3. Any hazard to the public obstructing the use of or obscuring the visibility of pedestrians or drivers using the public right-of-ways, easements, sidewalks or roadways, including, but not limited to, walls, fences, shrubs, trees, vehicles or structures;
  4. Walkways, driveways, parking lots and other improved surfaces in a deteriorated or unsafe condition or with fading required striping or markings;
  5. An infestation of termites, insects, vermin, rodents or other pests;
  6. The display or placement upon any fence, wall, tree, bush or any other structure, or portion thereof, of any linens, rugs, fabrics, nylon, or any other item of clothing or similar items except upon a recognized clothes line facility not located in the front yard;
  7. Any alteration to the alignment of a natural or developed drainage course, culvert, device, facility, improvement or system designed to convey stormwater runoff ("drainage system") or any drainage system which contains:
    - a. any blockage or damming which prevents the continuous and unimpeded flow of stormwater;
    - b. any vegetation not approved as part of the original design of the drainage system;
    - c. an accumulation of sediment which alters the elevation of the natural, designated or approved flow of stormwater;
    - d. any junk, trash, debris, items or materials not approved as part of the original design of the drainage system; or
    - e. any modification to the original approved design of a drainage system that restricts, impedes or reduces the natural or designed flow of the drainage system.
  8. Any attractive nuisance;

9. Any condition which creates a detriment or hazard to the public health, safety or general welfare as to constitute a public nuisance as defined by California Civil Code Section 3480, California Health & Safety Code Section 11570, California Penal Code Section 11225, or California Government Code Section 39561.”

#### SECTION 2. DECLARATION OF URGENCY:

This ordinance is declared to be necessary for the preservation of the public peace, health and safety for the reasons set forth in the recitals above and pursuant to California Government Code Section 36937.

#### SECTION 3. EFFECT OF ENACTMENT:

Except as specifically provided herein, nothing contained in this ordinance shall be deemed to modify or supersede any prior enactment of the City Council which addresses the same subject addressed herein.

#### SECTION 4. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

#### SECTION 5. REPEAL OF CONFLICTING PROVISIONS

All the provisions of the Municipal Code as heretofore adopted by the City of Rancho Mirage that are in conflict with the provisions of this ordinance are hereby repealed.

#### SECTION 6. NOTICE OF ADOPTION:

The City Clerk shall certify to the adoption of this ordinance and cause it to be posted in three public places within the city.

#### SECTION 7. EFFECTIVE DATE:

This ordinance shall take effect immediately upon the date of its adoption.

#### SECTION 8. CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

APPROVED AND ADOPTED this 22nd day of September, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Attachment: Ordinance - Urgency Stormwater Nuisance [Revision 2] (1657 : ADOPT URGENCY ORDINANCE NO. , AN ORDINANCE OF THE



**ORDINANCE JURAT**

STATE OF CALIFORNIA     )  
COUNTY OF RIVERSIDE    ) ss.  
CITY OF MORENO VALLEY    )

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, do hereby certify that Ordinance No. 905 was duly approved and adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the 22<sup>nd</sup> day of September, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

\_\_\_\_\_  
CITY CLERK

(SEAL)



## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Steve Quintanilla, Interim City Attorney

**AGENDA DATE:** September 22, 2015

**TITLE:** URGENCY ORDINANCE EMERGENCY FLOODING –  
SINGLE SOURCE AND SOLE SOURCE

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### **RECOMMENDED ACTION**

#### **Recommendations: That the City Council:**

1. Adopt Urgency Ordinance No. 906. An Urgency Ordinance of the City Council of the City of Moreno Valley, California, which allows the City to purchase goods, materials, and services through single and/or sole sourcing in response to and in preparation of the impending threat of flooding which is anticipated to be caused by El Niño.

### **SUMMARY**

The Moreno Valley Municipal Code (“Municipal Code”) provides certain requirements and procedures for purchasing goods, materials and services, in Chapter 3.12 of the Municipal Code. The proposed ordinance provides the City with the express authority to dispense with such procedures and requirements in case of emergency due to flooding. Specifically, the proposed ordinance provides the City with the express authority to either sole source or single source contracts, other than public works contracts, for goods, materials, and services in preparation of and in response to damage caused by flooding.

Additionally, the proposed ordinance details the procedures promulgated by the state, in Section 22050 of the Public Contract Code, which allows cities to dispense with the requirements that cities provide notice for bids to let public works contracts, in emergency situations.

The City is permitted to immediately adopt such an ordinance on an urgency basis under Government Code Section 36937 if the ordinance is for the immediate

preservation of the public peace, health or safety, contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council.

Such an ordinance permits the City Council to act without following the procedures otherwise required for the adoption of an ordinance in order to protect the public peace, health or safety.

**URGENCY**

The immediate adoption of this ordinance is necessary to preserve and protect the public peace, health, and safety based on the following.

Experts predict that there is a ninety (90) percent change El Niño conditions will continue through the winter of 2015 and an eighty (80) percent change that it will continue into the Spring of 2016. The National Weather Service’s Climate Prediction Center said that this El Niño is shaping up to be as strong as the 1997-98 El Niño, which resulted in storms that killed seventeen (17) people and caused more than half a billion dollars in damage in California.

**PREPARATION OF STAFF REPORT**

Prepared By: Steven B. Quintanilla, Interim City Attorney

**CITY COUNCIL GOALS**

None

**ATTACHMENTS**

- 1. 5001 - Urgency Ordinance Emergency Flooding (09 15 15)

**APPROVALS**

Budget Officer Approval	<u>      ✓ Approved      </u>	9/16/15 7:57 AM
City Attorney Approval	<u>      ✓ Approved      </u>	9/16/15 8:37 AM
City Manager Approval	<u>      ✓ Approved      </u>	9/16/15 2:04 PM

## ORDINANCE NO. 906

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, ADDING SECTION 3.12.340 TO CHAPTER 3.12 PURCHASING OF TITLE 3 REVENUE AND FINANCE OF THE MORENO VALLEY MUNICIPAL CODE ADOPTING PROCEDURES FOR SINGLE AND SOLE SOURCING IN PREPARATION OF AND IN RESPONSE TO FLOODING

**WHEREAS**, Chapter 3.12, “PURCHASING,” of the Moreno Valley Municipal Code sets forth general requirements applicable to the City of Moreno Valley’s purchasing procedures for goods and services; and

**WHEREAS**, Section 3.12.080, “General – Single and Sole Source,” generally provides when single or sole sourcing may be permitted, along with certain requirements the City of Moreno Valley (“City”) must abide by when single or sole sourcing, while expressly providing that the section is not applicable to public works projects except as permitted by state law; and

**WHEREAS**, Section 3.12.250, “Materials, supplies and equipment – Waiver of formal bid procedures,” generally allows the City to dispense with formal bid procedures under times of emergency; and

**WHEREAS**, Section 3.12.010, “Definitions,” defines “Emergency” as the existence or threatened existence of conditions of extreme peril to the safety of persons and property within the City that may vitally affect the life, health or convenience of citizens; and

**WHEREAS**, Section 3.12.010, “Definitions,” defines “Single Source” as “a contract for the purchase of goods or services entered into after soliciting and negotiating only with one source, usually because of the technology required or uniqueness of the product or service provided”; and

**WHEREAS**, Section 3.12.010, “Definitions,” defines “Sole source” as a circumstance where “only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, matching to currently owned equipment or supplies, the ability to deliver at a particular time, or services from a public utility”; and

**WHEREAS**, the City desires to amend the Municipal Code in light of the impending threat of El Niño in order to allow the City to single source and sole source for certain goods, materials, and services, in accordance with State law, and in order to allow the City to more effectively and efficiently respond to and prepare for flooding which is expected to be caused by El Niño; and

**WHEREAS**, experts predict that there is a ninety (90) percent chance El Niño conditions will continue through the winter of 2015 and an eighty (80) percent chance that it will continue into the Spring of 2016; and

**WHEREAS**, the National Weather Service's Climate Prediction Center said that this El Niño is shaping up to be as strong as the 1997-98 El Niño, which resulted in storms that killed seventeen (17) people and caused more than half a billion dollars in damage in California; and

**WHEREAS**, Public Contract Code Section 22050 allows cities to dispense with the requirement that cities provide notice for bids to let public works contracts; and

**WHEREAS**, Government Code Section 36937 provides that the City may adopt an ordinance that takes effect immediately when adopted for the immediate preservation of the public peace, health or safety, provided that the ordinance contains a declaration of the facts constituting the urgency, and is passed by a fourth-fifths vote of the City Council; and

**WHEREAS**, the City Council has determined that the immediate adoption of this ordinance is necessary to protect the public peace, health and safety of the general public.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY DOES ORDAIN AS FOLLOWS:

**SECTION 1. RECITALS**

That the above recitals are true and correct and are incorporated as though fully set forth herein.

**SECTION 2. AMENDMENT OF TITLE 3 REVENUE AND FINANCE OF THE MUNICIPAL CODE ADDING SECTION 3.12.340 EMERGENCY FLOODING – SINGLE SOURCE AND SOLE SOURCE TO CHAPTER 3.12 PURCHASING**

That Section 3.12.340 Emergency flooding – Single source and sole source, is hereby added to Chapter 3.12 PURCHASING, as follows:

**Section 3.12.340 Emergency flooding – Single source and sole source.**

**(a) Non-Public Works Contracts. In the event of an emergency caused or to be caused by flood, storm, or similar disaster that poses or is about to pose a serious threat to the public safety, as determined by the City Manager, the Mayor or City Manager may order the suspension of normal bidding or purchasing requirements otherwise required in this Chapter 3.12, and allow for single and sole sourcing procurements.**

**(b) Public Works Contracts. In case of an emergency, the City Council may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts, upon the passing of a resolution by a four-fifths vote of the City Council declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, it may expend any sum required by the emergency, pursuant to and in compliance with Public Contract Code Section 22050. The City Council may pass a resolution by four-fifths vote to delegate to the City Manager, the authority to order any action pursuant to this section.**

### **SECTION 3. SEVERABILITY**

That the City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

### **SECTION 4. REPEAL OF CONFLICTING PROVISIONS**

That all the provisions of the Municipal Code as heretofore adopted by the City of Moreno Valley that are in conflict with the provisions of this ordinance are hereby repealed.

### **SECTION 5. URGENCY FINDINGS**

That the immediate adoption of this ordinance is necessary to preserve and protect the public peace, health and safety in that it will minimize the possibility of significant damage to the City and its residents due to the serious and impending threat of flooding caused by El Niño.

### **SECTION 6. EFFECTIVE DATE**

That this ordinance shall take effect immediately upon adoption.

### **SECTION 7. CERTIFICATION**

That the City Clerk shall certify to the adoption of this ordinance and cause the same to be published according to law.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

APPROVED AND ADOPTED this 22<sup>nd</sup> day of September, 2015.

Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

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Attachment: 5001 - Urgency Ordinance Emergency Flooding (09 15 15) [Revision 1] (1671 : URGENCY ORDINANCE EMERGENCY FLOODING ?

**ORDINANCE JURAT**

STATE OF CALIFORNIA     )  
COUNTY OF RIVERSIDE    ) ss.  
CITY OF MORENO VALLEY)

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, do hereby certify that Ordinance No. 906 was duly approved and adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the 22<sup>nd</sup> day of September, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem and Mayor)

\_\_\_\_\_  
CITY CLERK

(SEAL)