

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

614



FROM: Economic Development Agency

SUBMITTAL DATE:
February 28, 2013

SUBJECT: First Amendment to Loan Agreement for the Use of HOME Funds for Monte Vista II Family Apartments

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached First Amendment to Loan Agreement for the Use of HOME Funds for Monte Vista II Family Apartments;
2. Approve the attached Amendment to Deed of Trust with Assignment of Rents and Amendment to Promissory Note;
3. Authorize the Chairman of the Board of Supervisors to sign the attached First Amendment, Amendment to Deed of Trust with Assignment of Rents and Amendment to Promissory Note; and

(Continued)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: HOME Investment Partnership Act Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY:
Jennifer J. Sargent
County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: ANNIE T. SAHAR
DATE: 2/11/13
Departmental Concurrence

Dep't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 3.17 of 5/25/2010 | District: 3/3 | Agenda Number: 3-12

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

RECOMMENDED MOTION: (Continued)

4. Authorize the Assistant County Executive Officer/EDA, or his designee, to take all necessary steps to implement the First Amendment, Amendment to Deed of Trust and Amendment to Promissory Note including, but not limited to, signing subsequent essential and relevant documents.

BACKGROUND:

On May 25, 2010, the Board of Supervisors approved a loan agreement for \$968,000 in HOME Investment Partnership Act (HOME) funds with Monte Vista II Family Housing, LLC, a California limited liability company, for the second phase development and construction of Monte Vista II Family Apartments, a 40-unit affordable housing complex for low-income families. The project site is approximately 2.01 acres and situated on the corner of Juniper Street and Jefferson Avenue in the City of Murrieta with Assessor Parcel Number 949-600-030.

Construction of the project is completed and the developer requests the Board to amend the terms of the permanent HOME loan agreement with an annual interest rate from 3.0% to 5.5% consistent with the financial pro forma for the project. The project consists of 10 one-bedroom units, 14 two-bedroom units, and 16 three-bedroom units. The units are located in three two-story buildings. The one-bedroom units are approximately 650 square feet, the two-bedroom units are approximately 750 square feet, and the three-bedroom units are approximately 1,050 square feet. All units will include a private balcony, refrigerator, dishwasher, combination range/oven, garbage disposal, and central heating/cooling. The residents will have access to the existing swimming pool, tot lots, community room and computer lab from phase one. An additional laundry facility, trash facility, and tot lot was constructed for the second phase.

County Counsel has reviewed and approved the attached First Amendment, Deed of Trust with Assignment of Rents and Promissory Note as to form. Staff recommends that the Board approve the attached First Amendment, Deed of Trust with Assignment of Rents and Promissory Note.

Attachments:

- First Amendment to Loan Agreement for the Use of HOME Funds
- Amendment to Deed of Trust with Assignment of Rents
- Amendment to Promissory Note

1 NO FEE FOR RECORDING PURSUANT
2 TO GOVERNMENT CODE SECTION 6103

3 Escrow No.

4 Loan No.

5 RECORDING REQUESTED BY AND
6 WHEN RECORDED MAIL TO:

7 County of Riverside
8 Economic Development Agency
9 5555 Arlington Ave
10 Riverside, CA 92504
11 Attn: Mervyn Manalo

12 SPACE ABOVE THIS LINE FOR RECORDERS USE

13 **FIRST AMENDMENT TO LOAN AGREEMENT**
14 **FOR THE USE OF HOME FUNDS**

15 This First Amendment to Loan Agreement for the Use of HOME Funds (“First
16 Amendment”) is made and entered into as of this ____ day of _____, 2013 by
17 and between the COUNTY OF RIVERSIDE (“COUNTY”), a political subdivision of the State
18 of California, and MONTE VISTA II FAMILY HOUSING, LLC (“OWNER”), a California
19 Limited Liability Company, whose Manager is Affirmed Housing Group, Inc., a Delaware
20 corporation.

21 WITNESSETH:

22 WHEREAS, COUNTY and OWNER entered into the Loan Agreement for the
23 Use of HOME Funds (“HOME Loan Agreement”) on May 25, 2010, recorded on December
24 14, 2011, as Instrument No. 2011-0554182 in the Official Records of Riverside County; and

25 WHEREAS, capitalized terms not defined herein shall have the meaning
26 ascribed to them in the HOME Loan Agreement; and

27 WHEREAS, pursuant to the HOME Loan Agreement, COUNTY agreed to lend
28 up to Nine Hundred Sixty Eight Thousand Dollars (\$968,000.00) in HOME funds to OWNER
for the second phase development and construction of an additional 40-unit affordable housing
complex for low-income families, identified as Monte Vista II Family Apartments and further
described in Exhibit “A” of the HOME Loan Agreement; and

WHEREAS, OWNER and COUNTY desire to amend the HOME Loan

1 Agreement and modify the interest rate from three percent (3%) to five and one-half percent
2 (5.5%); and

3 WHEREAS, amending the HOME Loan Agreement will assist the COUNTY to
4 fulfill its requirements under the HOME Investment Partnership Act Program.

5 NOW, THEREFORE, in consideration of the foregoing, and the promises and
6 mutual covenants and conditions hereinafter set forth, COUNTY and OWNER do hereby agree
7 as follows:

- 8 1. Section 4(c) of the HOME Loan Agreement is deleted and replaced in its entirety with
9 the following:

10 Interest. The interest rate shall be five and one-half percent (5.5%) simple interest per
11 annum.

- 12 2. Section 4(d)(1) of the HOME Loan Agreement is deleted and replaced in its entirety
13 with the following:

14 That the HOME Loan will accrue simple interest at a rate of five and one-half percent
15 (5.5%) per annum, except in the case of default as hereinafter provided, and shall be
16 repaid on an annual basis from the Project's Residual Receipts as defined herein.

- 17 3. Amendment to Deed of Trust with Assignment of Rents is attached hereto and by this
18 reference incorporated herein as Exhibit "A" to amend the interest rate of the HOME
19 Loan from three percent (3%) to five and one-half percent (5.5%) simple interest per
20 annum.

- 21 4. Amendment to Promissory Note is attached hereto and by this reference incorporated
22 herein as Exhibit "B" to amend the interest rate of the HOME Loan from three percent
23 (3%) to five and one-half percent (5.5%) simple interest per annum.

- 24 5. Pursuant to HOME regulations Section 92.206(d)(6) Eligible Project Costs, and in order
25 to alleviate the COUNTY's cost for staff time to process this First Amendment,
26 OWNER agrees to pay COUNTY ten thousand dollars (\$10,000). COUNTY herein
27 acknowledges receipt of a check from OWNER in the amount of ten thousand dollars
28 (\$10,000) which OWNER herein authorizes COUNTY to deposit upon the approval of

1 this First Amendment by the Board of Supervisors.

2 6. This First Amendment and HOME Loan Agreement set forth and contain the entire
3 understanding and agreement of the parties hereto. There are no oral or written
4 representations, understandings, or ancillary covenants, undertakings or agreements,
5 which are not contained or expressly referred to within this First Amendment and
6 HOME Loan Agreement.

7 7. Each of the attachments and exhibits attached hereto are incorporated herein by this
8 reference.

9 8. Except as modified and amended by this First Amendment all other terms and
10 conditions of the HOME Loan Agreement remain unmodified and in full force and
11 effect.

12 9. This First Amendment may be signed by the different parties hereto in counterparts,
13 each of which shall be an original but all of which together shall constitute one and the
14 same agreement.

15 10. The effective date of this First Amendment is the date the parties execute this First
16 Amendment. If the parties execute this First Amendment on more than one date, then the
17 last date this First Amendment is executed by a party shall be the effective date.

18 11. This First Amendment is not binding until approved by the Board of Supervisors.

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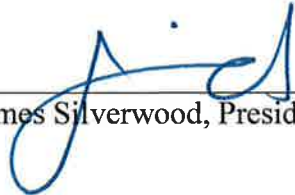
1 IN WITNESS WHEREOF, COUNTY and OWNER have executed this First
2 Amendment as of the date first above written.

3
4 COUNTY OF RIVERSIDE

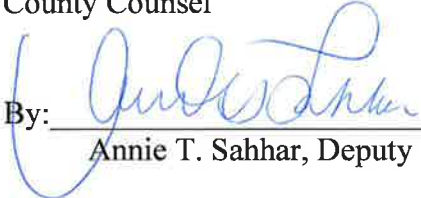
OWNER

5 Monte Vista II Family Housing, LLC,
6 a California Limited Liability Company,
7 By: Affirmed Housing Group, Inc.
8 a Delaware Corporation
9 Its: Manager

10 By: _____
11 John J. Benoit, Chairman
12 Board of Supervisors

10 By:  _____
11 James Silverwood, President

13 APPROVED AS TO FORM:
14 PAMELA J. WALLS
15 County Counsel

16 By:  _____
17 Annie T. Sahhar, Deputy

18 ATTEST:
19 KECIA HARPER-IHEM
20 Clerk of the Board

21
22 By: _____
23 Deputy

24
25 **(COUNTY and OWNER signatures need to be notarized)**
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ACKNOWLEDGMENT

State of California
County of San Diego)

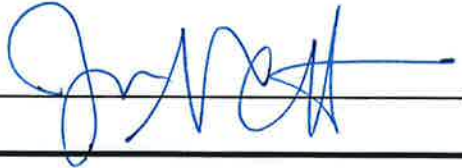
On February 20th, 2013 before me, Jessica Nicole Cometa, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature



(Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
COUNTY OF _____ }

On _____, before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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.

Place Notary Seal Above

Signature _____
Signature of Notary Public

EXHIBIT "A"

EXEMPT RECORDING FEE CODE 6103
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

County of Riverside
Economic Development Agency
5555 Arlington Ave
Riverside, CA 92504
Attn: Mervyn Manalo

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AMENDMENT TO DEED OF TRUST WITH ASSIGNMENT OF RENTS

This AMENDMENT TO DEED OF TRUST WITH ASSIGNMENT OF RENTS is made and entered into as of this ____ day of _____, 2013, by and between MONTE VISTA II FAMILY HOUSING, LLC, a California Limited Liability Company (“Borrower” or “Trustor”), and whose address is 13520 Evening Creek Drive North, Suite 360, San Diego, CA 92128, RIVERSIDE COUNTY ECONOMIC DEVELOPMENT AGENCY (“TRUSTEE”), and the COUNTY OF RIVERSIDE (“Lender” or “COUNTY”), a public agency, organized and existing under the laws of the State of California, and whose address is 5555 Arlington Avenue, Riverside, CA 92504, or such other place as COUNTY may provide in writing.

- A. Trustor executed that certain Deed of Trust with Assignment of Rents (the “Deed of Trust”), dated as of May 25, 2010, securing Trustor’s obligations pursuant to that certain “Promissory Note” in the original principal sum of Nine Hundred Sixty Eight Thousand Dollars (\$968,000.00).
- B. The Deed of Trust was recorded in the official records of Riverside County on December 23, 2011, as Document No. 2011-0554183.
- C. The parties have executed an Amendment to Promissory Note (“Note Amendment”), of even date herewith, which increases the interest rate of the Promissory Note to five and one-half percent (5.5%) simple interest per annum.

NOW, THEREFORE, the Deed of Trust is hereby amended as follows:

- 1. Amendment to Secured Amount. The interest rate of the HOME Loan, as set forth in the third paragraph of the Promissory Note, is hereby amended from three percent (3%) to five and one-half percent (5.5%) simple interest per annum (the “Amended Interest Rate”).
- 2. Remaining Terms Unaffected. Except as expressly provided herein, nothing in this Amendment to Deed of Trust with Assignment of Rents shall be deemed to waive or modify any of the other provisions of the Deed of Trust. In the event of any conflict between this Amendment to Deed of Trust with Assignment of Rents and the Deed of Trust, the terms of this Amendment to Deed of Trust with Assignment of Rents shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Deed of Trust with Assignment of Rents as of the date first set forth above.

TRUSTOR:

Monte Vista II Family Housing, LLC,
a California Limited Liability Company,
By: Affirmed Housing Group, Inc.,
a Delaware Corporation
Its: Manager

By:  _____
James Silverwood, President

TRUSTOR SIGNATURE MUST BE NOTARIZED

(SIGNATURES CONTINUE ON NEXT PAGE)

ACKNOWLEDGMENT

State of California
County of San Diego)

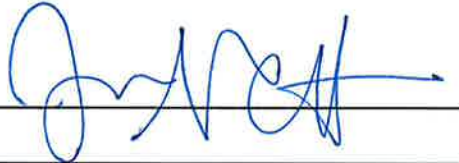
On February 20th, 2013 before me, Jessica Nicole Cometa, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature



(Seal)



AGREED AND ACCEPTED BY LENDER:

COUNTY OF RIVERSIDE

By: _____
John J. Benoit, Chairman
Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

By:  _____
Annie T. Sahhar, Deputy

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: _____
Deputy

LENDER SIGNATURE MUST BE NOTARIZED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA }

COUNTY OF _____ }

On _____, before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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.

Place Notary Seal Above

Signature _____
Signature of Notary Public

EXHIBIT “B”

AMENDMENT TO PROMISSORY NOTE

THIS AMENDMENT TO PROMISSORY NOTE (this "Note Amendment") is hereby made and entered into as of _____, 2013, by MONTE VISTA II FAMILY HOUSING, LLC ("Borrower"), a California Limited Liability Company, and the COUNTY OF RIVERSIDE ("COUNTY" or "Lender"), a public agency, organized and existing under the laws of the State of California.

A. Borrower executed a Promissory Note dated May 25, 2010 ("Original Note"), pursuant to which Borrower agreed to pay Lender the principal sum of Nine Hundred Sixty Eight Thousand Dollars (\$968,000.00) (the "Note Amount"), together with simple interest at a rate of three percent (3%) per annum.

B. Pursuant to the First Amendment to Loan Agreement for the Use of HOME Funds, dated _____, 2013, the parties now desire to increase the interest rate to five and one-half percent (5.5%) simple interest per annum.

NOW, THEREFORE, Borrower and Agency agree that the Original Note shall be amended as follows:

1. **Defined Terms.** Unless otherwise defined in this Note Amendment, initially capitalized terms shall have the meaning set forth in the Original Note.
2. **Interest Rate.** The interest rate of the Note Amount, as set forth in the third paragraph of the Original Note, is hereby amended from three percent (3%) to five and one-half percent (5.5%) simple interest per annum (the "Amended Interest Rate").
3. **Miscellaneous.** Except as expressly provided herein, nothing in this Note Amendment shall be deemed to waive or modify any of the other provisions of the Original Note. In the event of any conflict between this Note Amendment and the Original Note, the terms of this Note Amendment shall prevail.

(SIGNATURES CONTINUE ON NEXT PAGE)

IN WITNESS WHEREOF, Borrower and Lender have executed this Note Amendment as of the date set forth above.

BORROWER:

Monte Vista II Family Housing, LLC,
a California Limited Liability Company,
By: Affirmed Housing Group, Inc.,
a Delaware Corporation
Its: Manager

By:  _____
James Silverwood, President

(SIGNATURES CONTINUE ON NEXT PAGE)

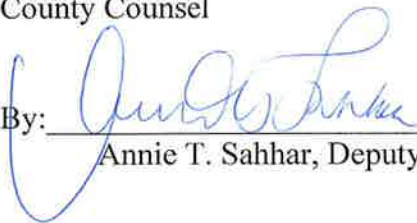
AGREED AND ACCEPTED BY LENDER:

COUNTY OF RIVERSIDE

By: _____
John J. Benoit, Chairman
Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

By:  _____
Annie T. Sahhar, Deputy

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: _____
Deputy