

FORM APPROVED COUNTY COUNSEL
 BY: *Jhaila R. Brown* 7-22-14
 DATE: _____
 JHAILA R. BROWN

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

255



FROM: Economic Development Agency

SUBMITTAL DATE:
 July 24, 2014

SUBJECT: Amended and Restated Community Development Block Grant (CDBG) Covenant Agreement and Amended and Restated HOME Covenant Agreement with Indio Family Housing Partners, L.P. for Indio Desert Palms Apartments in the City of Indio, District 4/District 4, [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Amended and Restated Community Development Block Grant (CDBG) Covenant Agreement with Indio Family Housing Partners, L.P. for Indio Desert Palms Apartments in the City of Indio;
2. Approve the attached Amended and Restated HOME Covenant Agreement with Indio Family Housing Partners, L.P. for Indio Desert Palms Apartments in the City of Indio;
3. Authorize the Chairman of the Board of Supervisors to execute the attached Amended and Restated CDBG Covenant Agreement and Amended and Restated HOME Covenant Agreement;

(Continued)

Robert Field

Robert Field
 Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: N/A					Budget Adjustment: No
					For Fiscal Year: 2014/15

C.E.O. RECOMMENDATION:

APPROVE

BY: *Rohini Dasika*
 Rohini Dasika

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: 3.14 of 11/9/93; 2.3 of 1/30/1996; 3.10 of 7/23/96; 3.13 of 10/6/09

District: 4/4

Agenda Number:

3-13

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

Economic Development Agency

FORM 11: Amended and Restated Community Development Block Grant (CDBG) Covenant Agreement and Amended and Restated HOME Covenant Agreement with Indio Family Housing Partners, L.P. for Indio Desert Palms Apartments in the City of Indio, District 4/District 4, [\$0]

DATE: July 24, 2014

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RECOMMENDED MOTION (Continued):

4. Authorize the Assistant County Executive Officer/EDA, or designee to execute a Subordination Agreement subordinating the Amended and Restated CDBG Covenant Agreement to a construction and/or permanent lender to be named at a later date, subject to approval by County Counsel;
5. Authorize the Assistant County Executive Officer/EDA, or designee to execute a Subordination Agreement subordinating the Amended and Restated HOME Covenant Agreement to a construction and/or permanent lender to be named at a later date, subject to approval by County Counsel; and
6. Authorize the Assistant County Executive Officer/EDA, or designee, to take all necessary steps to implement the Amended and Restated CDBG Covenant Agreement and Amended and Restated HOME Covenant Agreement including, but not limited to, signing subsequent necessary and relevant documents subject to County Counsel's approval.

BACKGROUND:

Summary

On November 9, 1993, the Board of Supervisors approved that certain Loan Agreement Economic Development Community Development Block Grant with Housing Corporation of America (HCA), a Utah nonprofit organization, in the amount of \$495,000 in Community Development Block Grant (CDBG) Funds for the construction and operation of Indio Desert Palms Apartments, a 142-unit affordable rental housing development in the City of Indio, County of Riverside (Project). The Project is located at 46-575 Clinton Street, Indio, CA 92201 with Assessor's Parcel Number 616-090-002 (Property). The cost of development was funded in part with low income housing tax credits.

On January 30, 1996, the Board of Supervisors approved that certain HOME Agreement with Indio Desert Palms Limited Partnership, a California limited partnership (Partnership) for \$500,000 in HOME funds for the project which was completed on July 13, 1995 consisting of a total of 144 affordable housing units for rent.

On July 23, 1996, the Board of Supervisors approved that certain First Amendment Loan Agreement Economic Development Community Development Block Grant which approved the transfer of ownership of the Project and Property from HCA to Partnership and added the Partnership as a co-borrower on the promissory note evidencing the CDBG Loan.

On October 6, 2009, the Board of Supervisors approved that certain Second Amendment to CDBG Loan Agreement and Promissory Note (County) which amended and included specific requirements for repayment, modified income restrictions and extended the period of affordability to 30 years from November 9, 1993. The affordability income restrictions set aside 73 units designated as floating affordable units for low-income households whose incomes do not exceed 60% of the median family income for Riverside County. Not less than 50% of the 73 units, or 37 units, are reserved for very low-income (VLI) households whose incomes do not exceed 50% of the median family income for Riverside County.

On April 1, 2014, the CDBG and HOME loans were paid off and the Property was acquired by Indio Family Housing Partners, L.P., a California limited partnership (IFHP), successor in interest to Indio Desert Palms Limited Partnership. Approximately \$465,000 in remaining principal and interest was paid back to the County. The deed of trust was removed and that certain CDBG Covenant Agreement, dated March 31, 2014, was recorded against the property to restrict the affordability of the Project.

(Continued)

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

Economic Development Agency

FORM 11: Amended and Restated Community Development Block Grant (CDBG) Covenant Agreement and Amended and Restated HOME Covenant Agreement with Indio Family Housing Partners, L.P. for Indio Desert Palms Apartments in the City of Indio, District 4/District 4, [\$0]

DATE: July 24, 2014

PAGE: 3 of 3

BACKGROUND:

Summary (Continued)

In order to undergo significant rehabilitation and improve the Property with a new community building, IFHP desires to refinance and re-syndicate the Property by applying for new low income housing tax credits. To successfully underwrite the Property for new tax credit funding, IFHP wishes to amend and replace the existing CDBG Covenant Agreement and modify the number of units on the Property restricted as very low income. As result of the proposed modification, a total of 73 units will remain designated as floating affordable units for low-income households whose incomes do not exceed 60% of the median family income for Riverside County and 29 units will be reserved for VLI households whose incomes do not exceed 50% of the median family income for Riverside County. As a result of the proposed amendment to the covenants, a total of 7 VLI units will be converted and reserved for low-income households whose incomes do not exceed 60% of the median family income for Riverside County. The proposed Amended and Restated CDBG Covenant Agreement (which is attached) will supersede in its entirety the existing recorded CDBG Covenant Agreement, which will become void and of no further force and effect. The proposed Amended and Restated HOME Covenant Agreement (attached) will be modified for consistency regarding subordination and supersede in its entirety the existing recorded HOME Covenant Agreement, which will become void and of no further force and effect.

County Counsel has reviewed and approved the attached Amended and Restated CDBG Covenant Agreement and Amended and Restated HOME Covenant Agreement as to form. Staff recommends that the Board approve and execute the Amended and Restated CDBG Covenant Agreement and Amended and Restated HOME Covenant Agreement.

Impact on Citizens and Businesses

Approving this item will have a positive impact on the residents of the apartment complex and surrounding community. Amending the covenant will assist with underwriting the property to refinance and re-syndicate tax credits for funding to rehabilitate and improve the property. Affordable housing for residents at Indio Desert Palms Apartments will be maintained for the remainder of the affordability period, which CDBG affordability restrictions are expected to expire November 8, 2023 and HOME restrictions are expected to expire July 13, 2025.

ATTACHMENTS:

Amended and Restated CDBG Covenant Agreement

Amended and Restated HOME Covenant Agreement

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

3 Order No.
4 Escrow No.
5 Loan No.

6 RECORDING REQUESTED BY AND
7 WHEN RECORDED MAIL TO:

8 County of Riverside
9 Economic Development Agency
10 5555 Arlington Avenue
11 Riverside, CA 92504
12 Attn. Mervyn Manalo

13 SPACE ABOVE THIS LINE FOR RECORDERS USE

14 **AMENDED AND RESTATED CDBG COVENANT AGREEMENT**

15 This Amended and Restated CDBG Covenant Agreement (“Amended and Restated
16 Covenant”) is made and entered into as of the _____ day of _____, 2014 by and
17 between the County of Riverside, a political subdivision of the State of California (“County”),
18 and Indio Family Housing Partners, L.P. , a California limited partnership (“IFHP”), successor in
19 interest to Indio Desert Palms Limited Partnership, a California limited partnership
20 (“Partnership”).

21 **RECITALS**

22 WHEREAS, IFHP owns that certain real property located at 46-575 Clinton Street,
23 Indio, CA 92201 also known as Assessor’s Parcel Number 616-090-002, legally described in
24 **Exhibit A**, which is attached hereto and incorporated herein by this reference (“Property”);

25 WHEREAS, the Housing Corporation of America, a Utah nonprofit organization
26 (“HCA”) and County entered into that certain Loan Agreement Economic Development
27 Community Development Block Grant dated November 9, 1993, as amended by that certain
28 First Amendment Loan Agreement Economic Development Community Development Block
Grant dated July 23, 1995 (which approved the transfer of ownership of the Project (defined
below) and the Property to the Partnership and added the Partnership as a co-borrower on the
promissory note evidencing the CDBG Loan (defined below), and that certain Second
Amendment to CDBG Loan Agreement and Promissory Note (County) dated October 6, 2009

1 and recorded on December 30, 2009 in the Official Records of the County of Riverside as
2 Document No. 2009-0668264 (collectively, the “CDBG Loan Agreement”);

3 WHEREAS, the CDBG Loan Agreement relates to, among other things, the loan from
4 the County to HCA of \$495,000 in Community Development Block Grant (“CDBG”) Funds
5 (“CDBG Loan”) for the construction and operation of a 142-unit affordable rental housing
6 development on the Property (the “Project”);

7 WHEREAS, pursuant to the CDBG Loan Agreement, 73 of the total number of rental
8 units constructed on the Project (“CDBG Rental Units”) shall be rented to and occupied by low
9 income and very low income households for a period of 30 years from the date of the original
10 CDBG Loan Agreement, which is November 9, 1993;

11 WHEREAS, the Project was completed on July 13, 1995 consisting of a total of 144
12 affordable rental housing units;

13 WHEREAS, on April 1, 2014, the Partnership sold the Property and the Project to IFHP,
14 and paid off the remaining balance of the CDBG Loan;

15 WHEREAS, to memorialize IFHP’s obligation to maintain the affordability of the CDBG
16 Rental Units pursuant to the CDBG Loan Agreement IFHP recorded that certain CDBG
17 Covenant Agreement, dated March 31, 2014, and recorded on April 1, 2014 in the Official
18 Records of the County of Riverside as Instrument No. 2014-0118586 (“Original Covenant”);

19 WHEREAS, on May 21, 2014, IFHP was allocated new tax credits to rehabilitate and
20 improve the Project with a much needed community building;

21 WHEREAS, to maintain the viability of the Project and to be consistent with the
22 requirements related to the tax credit allocation, IFHP has requested the County amend and
23 restate the Original Covenant to modify the number of units restricted to occupancy by very low
24 income households from the original thirty seven (37) units to twenty nine (29) units;

25 WHEREAS, the County desires to amend and restate the Original Covenant as requested
26 by IFHP such that upon the recordation of this Amended and Restated Covenant in the Official
27 Records, the Original Covenant will be superseded in its entirety, void and of no further force
28 and effect; and

1 WHEREAS, the parties agree that commencing upon the date of recordation of this
2 Amended and Restated Covenant in the Official Records, twenty-nine (29) of the CDBG Rental
3 Units shall be reserved for, rented to and occupied by very low-income households whose
4 incomes do not exceed fifty percent (50%) of the area median income for the County of
5 Riverside, adjusted by family size at the time of occupancy as set forth below.

6 NOW, THEREFORE, in consideration of the mutual covenants and agreements
7 contained in this Amended and Restated Covenant, and for other good and valuable
8 consideration, the receipt and sufficiency of which are hereby acknowledged, IFHP, on behalf of
9 itself and its successors, assigns, and each successor in interest or any part thereof, hereby
10 declares as follows:

11 1) EFFECT OF AMENDED AND RESTATED COVENANT. Commencing upon
12 the date this Amended and Restated Covenant is recorded in the Official Records (“Effective
13 Date”), the terms of the Original Covenant are hereby amended and restated in their entirety, of
14 no further force and effect, and entirely superseded by this Amended and Restated Covenant
15 (except to the extent of liabilities which arose thereunder prior to the Effective Date) and the
16 Original Covenant shall be removed as an encumbrance against the Property.

17 2) RESTRICTIONS. **This Amended and Restated Covenant shall continue in full**
18 **force and effect for a period of thirty (30) years from November 9, 1993 (“Term”).** IFHP for
19 itself and on behalf of its successors and assigns, covenants, acknowledges and agrees that the
20 Property shall be held, sold and conveyed, subject to the following covenants, conditions, and
21 restrictions:

22 a) During the Term of this Amended and Restated Covenant seventy-three
23 (73) of the total number of units constructed on the Property as part of the Project (“CDBG
24 Rental Units”) shall be designated as floating affordable units (as defined in subsection b)
25 below), rented to and occupied by households whose incomes do not exceed sixty percent (60%)
26 of the area median income for the County of Riverside, adjusted by family size at the time of
27 occupancy. Twenty-nine (29) of the CDBG Rental Units shall be reserved for, rented to and
28 occupied by very low-income households whose incomes do not exceed fifty percent (50%) of

1 the area median income for the County of Riverside, adjusted by family size at the time of
2 occupancy. If IFHP does not complete, rehabilitate and improve the Project with a much needed
3 community building by July 1, 2016, evidenced by a Notice of Completion, then not less than
4 fifty percent (50%) of the CDBG Rental Units shall be reserved for, rented to and occupied by
5 very low-income households whose incomes do not exceed fifty percent (50%) of the area
6 median income for the County of Riverside, adjusted by family size at the time of occupancy.
7 The CDBG Rental Units shall remain affordable as set forth herein during the Term of this
8 Amended and Restated Covenant.

9 b) The term “floating units” as used herein shall mean that when the CDBG
10 Rental Units, as floating units, are changed IFHP, including its successors and assigns, is
11 required to maintain conformity with the requirements of this Amended and Restated Covenant
12 during the Term of this Amended and Restated Covenant, the number of CDBG Rental Units
13 shall remain the same, and each substituted unit shall be comparable in terms of size, features,
14 and number of bedrooms to the originally designated CDBG Rental Unit.

15 c) The maximum monthly affordable rent, including a reasonable utility
16 allowance for utilities and services (excluding telephone), that may be charged to tenants of the
17 CDBG Rental Units, shall not exceed the following:

- 18 1. As to the very low income units, one-twelfth (1/12) times the product
19 of thirty percent (30%) times fifty percent (50%) of the area median
20 income for the County of Riverside, adjusted by family size at the time
21 of occupancy.
- 22 2. As to the low income units, one-twelfth (1/12) times the product of
23 thirty percent (30%) times sixty percent (60%) of the area median
24 income for the County of Riverside, adjusted by family size at the time
25 of occupancy.

26 d) IFHP on behalf of itself and its successors, assigns, and each successor in
27 interest to the Property and the Project including CDBG Rental Units or any part thereof shall
28 comply with, and be bound by, all applicable provisions of Title I of the Housing and

1 Community Development Act of 1974, Pub.L. 93-383, as amended (42 USC 5301 et seq.), and
2 the implementing regulations promulgated by the Department of Housing and Urban
3 Development governing Community Development Block Grants found at 24 CFR Part 570.

4 3) MAINTENANCE OF THE PROPERTY. IFHP, on behalf of itself and its
5 successors, assigns, and each successor in interest to the Property and Project or any part thereof
6 hereby covenants to and shall protect, maintain, and preserve the Property in compliance with all
7 applicable federal and state law and regulations and local ordinances. In addition, IFHP, its
8 successors and assigns, shall maintain the improvements on the Property in the same aesthetic
9 and sound condition (or better) as the condition of the Property at the time of the recordation of
10 the Notice of Completion for the rehabilitation of the Project, reasonable wear and tear excepted.
11 This standard for the quality of maintenance of the Property shall be met whether or not a
12 specific item of maintenance is listed below. However, representative items of maintenance shall
13 include frequent and regular inspection for graffiti or damage or deterioration or failure, and
14 immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as
15 necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks
16 adjacent to the Property, on-site walks and paved areas and washing-down as necessary to
17 maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition,
18 including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a
19 regular basis; painting the buildings on a regular program and prior to the deterioration of the
20 painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a
21 leak-free and weather-tight condition; maintaining security devices in good working order. In the
22 event IFHP, its successors or assigns fails to maintain the Property in accordance with the
23 standard for the quality of maintenance, the County or its designee shall have the right but not
24 the obligation to enter the Property upon reasonable notice to IFHP, correct any violation, and
25 hold IFHP, or such successors or assigns responsible for the cost thereof, and such cost, until
26 paid, shall constitute a lien on the Property.

27 4) NONDISCRIMINATION. IFHP shall not discriminate on the basis of race, gender,
28 religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation,

1 selection, hiring or treatment of any contractors or consultants, to participate in
2 subcontracting/subconsulting opportunities. IFHP understands and agrees that violation of this
3 clause shall be considered a material breach of this Amended and Restated Covenant and may
4 result in termination, debarment or other sanctions. This language shall be incorporated into all
5 contracts between IFHP and any contractor, consultant, subcontractor, subconsultants, vendors
6 and suppliers. IFHP shall comply with the provisions of the California Fair Employment and
7 Housing Act (Government Code Sections 12900 et seq.), the Federal Civil Rights Act of 1964
8 (P.L. 88-352), as amended, and all Administrative Rules and Regulations issued pursuant to said
9 Acts and Orders with respect to its use of the Property.

10 IFHP herein covenants by and for itself, its successors and assigns, and all persons
11 claiming under or through them, that this Amended and Restated Covenant is made and
12 accepted upon and subject to the following conditions: There shall be no discrimination against
13 or segregation of any person or group of persons, on account of any basis listed in subdivision
14 (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections
15 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
16 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy,
17 tenure, or enjoyment of the Property, nor shall the transferee itself or any person claiming under
18 or through him or her, establish or permit any such practice or practices of discrimination or
19 segregation with reference to the selection, location, number, use, or occupancy, of tenants,
20 lessees, sublessees, subtenants, or vendees of the Property.

21 IFHP, its successors and assigns, shall refrain from restricting the rental, sale, or lease of
22 the Property or any portion thereof, on the basis of race, color, creed, religion, sex, sexual
23 orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and
24 contract entered into with respect to the Property, or any portion thereof, after the date of this
25 Amended and Restated Covenant shall contain or be subject to substantially the following
26 nondiscrimination or nonsegregation clauses:

- 27 a) In deeds: "The grantee herein covenants by and for himself or herself, his or her
28 heirs, executors, administrators, and assigns, and all persons claiming under or

1 through them, that there shall be no discrimination against or segregation of, any
2 person or group of persons on account of any basis listed in subdivision (a) or (d)
3 of Section 12955 of the Government Code, as those bases are defined in Sections
4 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
5 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease,
6 transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed,
7 nor shall the grantee or any person claiming under or through him or her,
8 establish or permit any practice or practices of discrimination or segregation with
9 reference to the selection, location, number, use or occupancy of tenants, lessees,
10 subtenants, sublessees, or vendees in the premises herein conveyed. The
11 foregoing covenants shall run with the land.”

12 b) In leases: “The lessee herein covenants by and for himself or herself, his or her
13 heirs, executors, administrators, and assigns, and all persons claiming under or
14 through him or her, and this lease is made and accepted upon and subject to the
15 following conditions: That there shall be no discrimination against or segregation
16 of any person or group of persons, on account of any basis listed in subdivision
17 (a) or (d) of Section 12955 of the Government Code, as those bases are defined
18 in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p)
19 of Section 12955, and Section 12955.2 of the Government Code, in the leasing,
20 subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises
21 herein leased nor shall the lessee himself or herself, or any person claiming under
22 or through him or her, establish or permit any such practice or practices of
23 discrimination or segregation with reference to the selection, location, number,
24 use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the
25 premises herein leased.”

26 c) In contracts: “There shall be no discrimination against or segregation of any
27 person or group of persons, on account of any basis listed in subdivision (a) or
28 (d) of Section 12955 of the Government Code, as those bases are defined in

1 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
2 Section 12955, and Section 12955.2 of the Government Code, in the sale, lease,
3 sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the
4 transferee itself or any person claiming under or through him or her, establish or
5 permit any such practice or practices of discrimination or segregation with
6 reference to the selection, location, number, use, or occupancy, of tenants,
7 lessees, sublessees, subtenants, or vendees of the land.”

8 In addition to the obligations and duties of IFHP set forth herein, IFHP shall, upon notice
9 from County, promptly pay to County all fees and costs, including administrative and attorneys’
10 fees, incurred by County in connection with responding to or defending any discrimination claim
11 brought by any third party and/or local, state or federal government entity, arising out of or in
12 connection with the CDBG Loan Agreement or this Amended and Restated Covenant.

13 5) INSURANCE. Without limiting or diminishing IFHP’s obligation to indemnify or
14 hold County harmless, IFHP shall procure and maintain or cause to be maintained, at its sole
15 cost and expense, the following insurance coverage’s during the term of this Amended and
16 Restated Covenant.

17 a) Worker’s Compensation Insurance. If IFHP has employees as defined by the State
18 of California, IFHP shall maintain statutory Workers' Compensation Insurance
19 (Coverage A) as prescribed by the laws of the State of California. Policy shall
20 include Employers’ Liability (Coverage B) including Occupational Disease with
21 limits not less than \$1,000,000 per person per accident. The policy shall be
22 endorsed to waive subrogation in favor of the County of Riverside, and, if
23 applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

24 b) Commercial General Liability Insurance. Commercial General Liability insurance
25 coverage, including but not limited to, premises liability, contractual liability,
26 products and completed operations liability, personal and advertising injury, and
27 cross liability coverage, covering claims which may arise from or out of IFHP’s
28 performance of its obligations hereunder. Policy shall name the County of

1 Riverside, its Agencies, Districts, Special Districts, and Departments, their
2 respective directors, officers, Board of Supervisors, employees, elected or
3 appointed officials, agents or representatives as Additional Insured. Policy's limit
4 of liability shall not be less than \$1,000,000 per occurrence combined single limit.
5 If such insurance contains a general aggregate limit, it shall apply separately to
6 this Amended and Restated Covenant or be no less than two (2) times the
7 occurrence limit.

8 c) Vehicle Liability Insurance. If vehicles or mobile equipment are used in the
9 performance of the obligations under this Amended and Restated Covenant, then
10 IFHP shall maintain liability insurance for all owned, non-owned or hired vehicles
11 so used in an amount not less than \$1,000,000 per occurrence combined single
12 limit. If such insurance contains a general aggregate limit, it shall apply
13 separately to this Amended and Restated Covenant or be no less than two (2)
14 times the occurrence limit. Policy shall name the County of Riverside, its
15 Agencies, Districts, Special Districts, and Departments, their respective directors,
16 officers, Board of Supervisors, employees, elected or appointed officials, agents
17 or representatives as Additional Insured or provide similar evidence of coverage
18 approved by County's Risk Manager ("Risk Manager").

19 d) General Insurance Provisions – All Lines.

20 i) Any insurance carrier providing insurance coverage hereunder shall be
21 admitted to the State of California and have an A M BEST rating of not less
22 than A: VIII (A:8) unless such requirements are waived, in writing, by Risk
23 Manager. If Risk Manager waives a requirement for a particular insurer such
24 waiver is only valid for that specific insurer and only for one policy term.

25 ii) IFHP's insurance carrier(s) must declare its insurance self-insured retentions.
26 If such self-insured retentions exceed \$500,000 per occurrence such retentions
27 shall have the prior written consent of Risk Manager. Upon notification of
28 self-insured retention unacceptable to County, and at the election of Risk

1 Manager, IFHP's carriers shall either: (a) reduce or eliminate such self-
2 insured retention, or (b) procure a bond which guarantees payment of losses
3 and related investigations, claims administration, and defense costs and
4 expenses.

5 iii) IFHP shall cause IFHP's insurance carrier(s) to furnish the County of
6 Riverside with copies of the Certificate(s) of Insurance and Endorsements
7 effecting coverage as required herein, and 2) if requested to do so orally or in
8 writing by Risk Manager, provide copies of policies including all
9 Endorsements and all attachments thereto, showing such insurance is in full
10 force and effect. Further, said Certificate(s) and policies of insurance shall
11 contain the covenant of the insurance carrier(s) that thirty (30) days written
12 notice shall be given to the County of Riverside prior to any material
13 modification, cancellation, expiration or reduction in coverage of such
14 insurance. IFHP shall not continue operations until County has been furnished
15 Certificate(s) of Insurance and copies of endorsements and if requested,
16 copies of policies of insurance including all endorsements and any and all
17 other attachments as required herein. An individual authorized by the
18 insurance carrier to do so, on its behalf, shall sign the original endorsements
19 for each policy and the Certificate of Insurance.

20 iv) It is understood and agreed to by the parties hereto that IFHP's insurance shall
21 be construed as primary insurance, and County's insurance and/or deductibles
22 and/or self-insured retention's or self-insured programs shall not be construed
23 as contributory.

24 v) If, during the term of this Amended and Restated Covenant or any extension
25 thereof, there is a material change in the scope of services or there is a
26 material change in the equipment to be used in the performance of the scope
27 of work which will add additional exposures (such as the use of aircraft,
28 watercraft, cranes, etc.), then County reserves the right to adjust the types of

1 insurance required under this Amended and Restated Covenant and the
2 monetary limits of liability for the insurance coverage's currently required
3 herein, if, in Risk Manager's reasonable judgment, the amount or type of
4 insurance carried by IFHP has become inadequate.

5 vi) IFHP shall pass down the insurance obligations contained herein to all tiers of
6 subcontractors.

7 vii) IFHP agrees to notify County of any claim by a third party or any incident or
8 event that may give rise to a claim arising from the performance of this
9 Amended and Restated Covenant or the CDBG Loan Agreement.

10 6) HOLD HARMLESS/INDEMNIFICATION. IFHP shall indemnify and hold harmless
11 the County of Riverside, its Agencies, Districts, Special Districts and Departments, their
12 respective directors, officers, Board of Supervisors, elected and appointed officials, employees,
13 agents and representatives (individually and collectively hereinafter referred to as Indemnitees)
14 from any liability whatsoever, based or asserted upon any services of IFHP, its officers,
15 employees, subcontractors, agents or representatives arising out of or in any way relating to this
16 Amended and Restated Covenant or the CDBG Loan Agreement, including but not limited to
17 property damage, bodily injury, or death or any other element of any kind or nature whatsoever
18 arising from the performance of IFHP, its officers, employees, subcontractors, agents or
19 representatives Indemnitors from this Amended and Restated Covenant and the CDBG Loan
20 Agreement. IFHP shall defend, at its sole expense, all costs and fees including, but not limited, to
21 attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any
22 claim or action based upon such alleged acts or omissions. With respect to any action or claim
23 subject to indemnification herein by IFHP, IFHP shall, at their sole cost, have the right to use
24 counsel of their own choice and shall have the right to adjust, settle, or compromise any such
25 action or claim without the prior consent of County; provided, however, that any such
26 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes IFHP's
27 indemnification to Indemnitees as set forth herein. IFHP's obligation hereunder shall be satisfied
28 when IFHP has provided to County the appropriate form of dismissal relieving County from any

1 liability for the action or claim involved. The specified insurance limits required in this Amended
2 and Restated Covenant shall in no way limit or circumscribe IFHP's obligations to indemnify
3 and hold harmless the Indemnitees herein from third party claims. In the event there is conflict
4 between this clause and California Civil Code Section 2782, this clause shall be interpreted to
5 comply with Civil Code 2782. Such interpretation shall not relieve the IFHP from indemnifying
6 the Indemnitees to the fullest extent allowed by law.

7 7) NOTICES. All Notices provided for in this Amended and Restated Covenant shall
8 be deemed when personally delivered, or two (2) days following mailing by certified mail, return
9 receipt requested. All mailing shall be addressed to the respective parties at their addresses set
10 forth below, or at such other address as each party may designate in writing:

<u>COUNTY</u>	<u>IFHP</u>
Assistant Director, Housing	Attn: James Silverwood, President
Riverside County	Indio Family Housing Partners, L.P.
Economic Development Agency	c/o Affirmed Housing Group, Inc.
5555 Arlington Avenue	13520 Evening Creek Drive North, Suite 160
Riverside, CA 92504	San Diego, CA 92128

15 8) REMEDIES. County shall have the right, in the event of any breach of any such
16 agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law
17 or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or
18 covenant.

19 9) TERM. The non-discrimination covenants, conditions and restrictions contained in
20 Section 4 of this Amended and Restated Covenant shall remain in effect in perpetuity. Every
21 other covenant, condition and restriction contained in this Amended and Restated Covenant shall
22 remain in effect for not less than the Term.

23 10) NOTICE AND CURE. Prior to exercising any remedies hereunder, the County shall
24 give IFHP notice of such default. Any monetary default shall be cured within seven (7) days of
25 delivery of notice by County. Except as otherwise set forth herein, if a non-monetary default is
26 reasonably capable of being cured within sixty (60) days of delivery of notice, IFHP shall have
27 such period to effect a cure prior to exercise of remedies by County. If the non-monetary default
28 is such that it is not reasonably capable of being cured within sixty (60) days, and IFHP (a)

1 initiates corrective action within said period, and (b) diligently, continually, and in good faith
2 works to effect a cure as soon as possible, then IFHP shall have such additional time as is
3 reasonably necessary to cure the default prior to exercise of any remedies by the County; but in
4 no event no later than ninety (90) days from delivery of notice.

5 If a violation of any of the covenants or provisions of this Amended and Restated
6 Covenant remains uncured after the respective time period set forth in this Section 10, County
7 and its successors and assigns, without regard to whether County or its successors and assigns is
8 an owner of any land or interest therein to which this Amended and Restated Covenants relate,
9 may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any
10 such violation or attempted violation or to compel specific performance by IFHP of its
11 obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation
12 shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or
13 to obtain relief against or recover for the continuation or repetition of such breach or violations
14 or any similar breach or violation hereof at any later time.

15 11) GOVERNING LAW; VENUE; SEVERABILITY. This Amended and Restated
16 Covenant shall be governed by the laws of the State of California. Any legal action related to the
17 performance or interpretation of this Amended and Restated Covenant shall be filed only in the
18 Superior Court of the State of California located in Riverside, California, and the parties waive
19 any provision of law providing for a change of venue to another location. In the event any
20 provision in this Amended and Restated Covenant is held by a court of competent jurisdiction to
21 be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full
22 force without being impaired or invalidated in any way.

23 12) BINDING EFFECT. The rights and obligations of this Amended and Restated
24 Covenant shall bind and inure to the benefit of the respective heirs, successors and assigns of the
25 parties.

26 13) COUNTERPARTS. This Amended and Restated Covenant may be signed by the
27 different parties hereto in counterparts, each of which shall be an original, but all of which
28 together shall constitute one and the same agreement.

1 14) PERMITTED MORTGAGES. No violation or breach of the covenants, conditions,
2 restrictions, provisions or limitations contained in this Amended and Restated Covenant shall
3 defeat or render invalid or in any way impair the lien or charge of any mortgage permitted by the
4 CDBG Loan Agreement or otherwise approved in writing by the County.

5 ///

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7 ///

8 [remainder of page intentionally blank]

9
10 [signatures on following page]

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1 IN WITNESS WHEREOF, County and IFHP have executed this Amended and Restated
2 Covenant as of the date first above written.

3 COUNTY:

IFHP:

4 County of Riverside, a political
5 Subdivision of the State of California

Indio Family Housing Partners, L.P.
a California limited partnership

6
7 By: _____
8 Jeff Stone, Chairman
9 Board of Supervisors

By: AHG Indio, LLC
a California limited liability company
Its: Administrative General Partner

10 Date: _____

By: Affirmed Housing Group, Inc.
a Delaware corporation
Its: Manager

11 ATTEST:
12 KECIA HARPER-IHEM
13 Clerk of the Board

By: _____
James Silverwood
President

14
15 By: _____
Deputy

Date: 7.15.14

16 APPROVED AS TO FORM:
17 PAMELA J. WALLS, County Counsel

By: NEXUS For Affordable Housing, Inc.
a California non-profit corporation
Its: Managing General Partner

18
19 By: Jhaila R. Brown
20 Jhaila R. Brown, Deputy County Counsel

By: _____
Shane Cowan, Executive Director

21 Date: _____
22
23
24
25

26 **(COUNTY and IFHP signatures need to be notarized)**
27
28

1 IN WITNESS WHEREOF, County and IFHP have executed this Amended and Restated
2 Covenant as of the date first above written.

3 COUNTY:
4 County of Riverside, a political
5 Subdivision of the State of California

IFHP:
Indio Family Housing Partners, L.P.
a California limited partnership

6
7 By: _____
8 Jeff Stone, Chairman
9 Board of Supervisors

By: AHG Indio, LLC
a California limited liability company
Its: Administrative General Partner

10 Date: _____

By: Affirmed Housing Group, Inc.
a Delaware corporation
Its: Manager

11 ATTEST:
12 KECIA HARPER-IHEM
13 Clerk of the Board

By: _____
James Silverwood
President

14 By: _____
15 Deputy

Date: _____

16 APPROVED AS TO FORM:
17 PAMELA J. WALLS, County Counsel

By: NEXUS For Affordable Housing, Inc.
a California non-profit corporation
Its: Managing General Partner

18
19 By: _____
20 Jhaila R. Brown, Deputy County Counsel

By: 
Shane Cowan, Executive Director

21 Date: July 15, 2014

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26 **(COUNTY and IFHP signatures need to be notarized)**
27
28

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

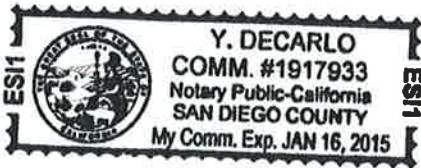
STATE OF CALIFORNIA }

COUNTY OF San Diego }

On July 15, 2014, before me, Y. DeCarlo Notary Public
Date Here Insert Name and Title of the Officer

personally appeared James Silverwood
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.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
COUNTY OF Orange }


On July 15, 2014, before me, Kara S. Cappeluti, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Shane Cowan
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.

Signature 
Signature of Notary Public

Place Notary Seal Above



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.

Signature _____

Place Notary Seal Above

Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 IN THE CITY OF INDIO, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY PARCEL MAP RECORDED JANUARY 23, 1968 IN BOOK 1, PAGE 11 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 616-090-002

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

3 Order No.
4 Escrow No.
5 Loan No.

6 RECORDING REQUESTED BY AND
7 WHEN RECORDED MAIL TO:

8 County of Riverside
9 Economic Development Agency
10 5555 Arlington Avenue
11 Riverside, CA 92504
12 Attn. Mervyn Manalo

13 SPACE ABOVE THIS LINE FOR RECORDERS USE

14 **AMENDED AND RESTATED HOME COVENANT AGREEMENT**

15 This Amended and Restated HOME Covenant Agreement (“Amended and Restated
16 Covenant”) is made and entered into as of the ____ day of _____, 2014 by and
17 between the County of Riverside, a political subdivision of the State of California (“County”)
18 and Indio Family Housing Partners, L.P., a California limited partnership (“IFHP”), successor in
19 interest to Indio Desert Palms Limited Partnership.

20 **RECITALS**

21 WHEREAS, IFHP owns that certain real property located at 46-575 Clinton Street,
22 Indio, CA 92201 also known as Assessor’s Parcel Number 616-090-002, legally described in
23 **Exhibit A**, which is attached hereto and incorporated herein by this reference (“Property”);

24 WHEREAS, on January 30, 1996, Indio Desert Palms Limited Partnership, a California
25 limited partnership (“Partnership”) and County entered into that certain HOME Agreement, as
26 amended by that certain First Amendment to HOME Loan Agreement and Promissory Note
27 dated October 6, 2009 and recorded on December 30, 2009 in the Official Records of the County
28 of Riverside as Document No. 2009-0668263 (collectively the “HOME Agreement”) wherein the
County loaned to the Partnership \$500,000 in Home Investment Partnerships Act (“HOME”)
Funds (“HOME Loan”) to pay a portion of the costs for the construction and development of a
144-unit affordable rental housing development located in the City of Indio, County of Riverside
 (“Project”). All capitalized terms not defined herein shall have the meaning ascribed to them in

1 the HOME Agreement;

2 WHEREAS, on July 13, 1995, the Partnership completed construction of 144 units to be
3 rented as affordable housing, and reserved 11 of the units as HOME-assisted units for qualified
4 low-income households ("HOME assisted units") in accordance with Title 24, Code of Federal
5 Regulations (CFR), section 92.252, Qualification as affordable housing: Rental housing;

6 WHEREAS, on or about the date hereof, the Partnership sold the Property and the Project
7 to IFHP and paid off the remaining balance of the HOME Loan;

8 WHEREAS, pursuant to Section 2(d) of the HOME Agreement, the Project, including the
9 HOME assisted units, will remain affordable to qualified low-income tenants for 30 years,
10 commencing with the issuance of the final certification of occupancy for the Project without
11 regard to (i) the term of the Note, or (ii) transfer of ownership of the Project; and

12 WHEREAS, the parties desire to memorialize IFHP's obligation to maintain the
13 affordability of the HOME Assisted units pursuant to the HOME regulations, as more
14 particularly set forth below.

15 NOW, THEREFORE, in consideration of the mutual covenants and agreements
16 contained in this Amended and Restated Covenant, and for other good and valuable
17 consideration, the receipt and sufficiency of which are hereby acknowledged, IFHP, on behalf of
18 itself and its successors, assigns, and each successor in interest or any part thereof, hereby
19 declares as follows:

20 1) EFFECT OF AMENDED AND RESTATED COVENANT. Commencing upon
21 the date this Amended and Restated Covenant is recorded in the Official Records ("Effective
22 Date"), the terms of the Original Covenant are hereby amended and restated in their entirety, of
23 no further force and effect, and entirely superseded by this Amended and Restated Covenant
24 (except to the extent of liabilities which arose thereunder prior to the Effective Date) and the
25 Original Covenant shall be removed as an encumbrance against the Property.

26 2) RESTRICTIONS. **This Covenant shall continue in full force and effect for a**
27 **period of thirty (30) years from July 13, 1995 ("Term").** IFHP for itself and on behalf of its
28 successors and assigns, covenants, acknowledges and agrees that the Property shall be held, sold

1 and conveyed, subject to the following covenants, conditions, and restrictions:

2 a) During the Term of this Amended and Restated Covenant, eleven (11)
3 rental units of the Project shall be designated as floating HOME units as defined under 24 CFR
4 92.252 (“HOME assisted units”) and shall be restricted to Low HOME rent limits (as defined in
5 24 CFR 92.252 (b)), as published by the United States Department of Housing and Urban
6 Development (HUD), limited to households whose incomes do not exceed fifty percent (50%) of
7 the area median income for the County of Riverside, adjusted by family size at the time of
8 occupancy. The HOME assisted units shall remain affordable as set forth herein during the Term
9 of this Covenant.

10 b) Pursuant to 24 CFR 92.252 (j) the Housing assisted units, as floating units,
11 are changed to maintain conformity with the requirements of 24 CFR 92.252 during the period of
12 affordability so that the total number of housing units meeting the requirements of 24 CFR
13 92.252 remains the same, and each substituted unit is comparable in terms of size, features, and
14 number of bedrooms to the originally designated HOME assisted units.

15 c) IFHP on behalf of itself and its successors, assigns, and each successor in
16 interest to the Property and the Project including HOME-assisted units or any part thereof shall
17 comply with, and be bound by, all applicable provisions of the HOME Investment Partnership
18 Program as enacted under Title II of the Cranston Gonzalez National Affordable Housing Act
19 (42 USC 12701 et seq.) and its implementing regulations, 24 CFR Part 92, as both shall be
20 amended from time to time, including, but not limited to, 24 CFR 92.356, 24 CFR 92.358, 24
21 CFR 92.253, 24 CFR 92.252, 24 CFR 92.255, 24 CFR 92.256, and 24 CFR 92.350.

22 d) Rent limitations for the HOME assisted units shall be as set forth under 24
23 CFR 92.252 and such units shall be rented and occupied by income qualified applicants at the
24 HOME rent levels for the County of Riverside, which are published periodically by HUD.

25 3) MAINTENANCE OF THE IMPROVEMENTS. IFHP, on behalf of itself and its
26 successors, assigns, and each successor in interest to the Property and Project or any part thereof
27 hereby covenants to and shall protect, maintain, and preserve the Property in compliance with all
28 applicable federal and state law and regulations and local ordinances. In addition, IFHP, its

1 successors and assigns, shall maintain the improvements on the Property in the same aesthetic
2 and sound condition (or better) as the condition of the Property at the time of the recordation of
3 the Notice of Completion for the rehabilitation of the Project, reasonable wear and tear excepted.
4 This standard for the quality of maintenance of the Property shall be met whether or not a
5 specific item of maintenance is listed below. However, representative items of maintenance shall
6 include frequent and regular inspection for graffiti or damage or deterioration or failure, and
7 immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as
8 necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks
9 adjacent to the Property, on-site walks and paved areas and washing-down as necessary to
10 maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition,
11 including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a
12 regular basis; painting the buildings on a regular program and prior to the deterioration of the
13 painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a
14 leak-free and weather-tight condition; maintaining security devices in good working order. In the
15 event IFHP, its successors or assigns fails to maintain the Property in accordance with the
16 standard for the quality of maintenance, the County or its designee shall have the right but not
17 the obligation to enter the Property upon reasonable notice to IFHP, correct any violation, and
18 hold IFHP, or such successors or assigns responsible for the cost thereof, and such cost, until
19 paid, shall constitute a lien on the Property.

20 4) NONDISCRIMINATION. IFHP shall not discriminate on the basis of race,
21 gender, religion, national origin, ethnicity, sexual orientation, age or disability in the
22 solicitation, selection, hiring or treatment of any contractors or consultants, to participate in
23 subcontracting/subconsulting opportunities. IFHP understands and agrees that violation of this
24 clause shall be considered a material breach of this Amended and Restated Covenant and may
25 result in termination, debarment or other sanctions. This language shall be incorporated into all
26 contracts between IFHP and any contractor, consultant, subcontractor, subconsultants, vendors
27 and suppliers. IFHP shall comply with the provisions of the California Fair Employment and
28 Housing Act (Government Code Sections 12900 et seq.), the Federal Civil Rights Act of 1964

1 (P.L. 88-352), as amended, and all Administrative Rules and Regulations issued pursuant to said
2 Acts and Orders with respect to its use of the Property.

3 IFHP herein covenants by and for itself, its successors and assigns, and all persons
4 claiming under or through them, that this Amended and Restated Covenant is made and
5 accepted upon and subject to the following conditions: There shall be no discrimination against
6 or segregation of any person or group of persons, on account of any basis listed in subdivision
7 (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections
8 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
9 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy,
10 tenure, or enjoyment of the Property, nor shall the transferee itself or any person claiming under
11 or through him or her, establish or permit any such practice or practices of discrimination or
12 segregation with reference to the selection, location, number, use, or occupancy, of tenants,
13 lessees, sublessees, subtenants, or vendees of the Property.

14 IFHP, its successors and assigns, shall refrain from restricting the rental, sale, or lease of
15 the Property or any portion thereof, on the basis of race, color, creed, religion, sex, sexual
16 orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and
17 contract entered into with respect to the Property, or any portion thereof, after the date of this
18 Amended and Restated Covenant shall contain or be subject to substantially the following
19 nondiscrimination or nonsegregation clauses:

- 20 a) In deeds: "The grantee herein covenants by and for himself or herself, his or her
21 heirs, executors, administrators, and assigns, and all persons claiming under or
22 through them, that there shall be no discrimination against or segregation of, any
23 person or group of persons on account of any basis listed in subdivision (a) or (d)
24 of Section 12955 of the Government Code, as those bases are defined in Sections
25 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
26 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease,
27 transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed,
28 nor shall the grantee or any person claiming under or through him or her,

1 establish or permit any practice or practices of discrimination or segregation with
2 reference to the selection, location, number, use or occupancy of tenants, lessees,
3 subtenants, sublessees, or vendees in the premises herein conveyed. The
4 foregoing covenants shall run with the land.”

5 b) In leases: “The lessee herein covenants by and for himself or herself, his or her
6 heirs, executors, administrators, and assigns, and all persons claiming under or
7 through him or her, and this lease is made and accepted upon and subject to the
8 following conditions: That there shall be no discrimination against or segregation
9 of any person or group of persons, on account of any basis listed in subdivision
10 (a) or (d) of Section 12955 of the Government Code, as those bases are defined
11 in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p)
12 of Section 12955, and Section 12955.2 of the Government Code, in the leasing,
13 subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises
14 herein leased nor shall the lessee himself or herself, or any person claiming under
15 or through him or her, establish or permit any such practice or practices of
16 discrimination or segregation with reference to the selection, location, number,
17 use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the
18 premises herein leased.”

19 c) In contracts: “There shall be no discrimination against or segregation of any
20 person or group of persons, on account of any basis listed in subdivision (a) or
21 (d) of Section 12955 of the Government Code, as those bases are defined in
22 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
23 Section 12955, and Section 12955.2 of the Government Code, in the sale, lease,
24 sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the
25 transferee itself or any person claiming under or through him or her, establish or
26 permit any such practice or practices of discrimination or segregation with
27 reference to the selection, location, number, use, or occupancy, of tenants,
28 lessees, sublessees, subtenants, or vendees of the land.”

1 In addition to the obligations and duties of IFHP set forth herein, IFHP shall, upon notice
2 from County, promptly pay to County all fees and costs, including administrative and attorneys'
3 fees, incurred by County in connection with responding to or defending any discrimination claim
4 brought by any third party and/or local, state or federal government entity, arising out of or in
5 connection with the HOME Agreement or this Amended and Restated Covenant.

6 5) INSURANCE. Without limiting or diminishing IFHP's obligation to indemnify or
7 hold County harmless, IFHP shall procure and maintain or cause to be maintained, at its sole
8 cost and expense, the following insurance coverage's during the term of this Amended and
9 Restated Covenant.

10 a) Worker's Compensation Insurance. If IFHP has employees as defined by the State
11 of California, IFHP shall maintain statutory Workers' Compensation Insurance
12 (Coverage A) as prescribed by the laws of the State of California. Policy shall
13 include Employers' Liability (Coverage B) including Occupational Disease with
14 limits not less than \$1,000,000 per person per accident. The policy shall be
15 endorsed to waive subrogation in favor of the County of Riverside, and, if
16 applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

17 b) Commercial General Liability Insurance. Commercial General Liability insurance
18 coverage, including but not limited to, premises liability, contractual liability,
19 products and completed operations liability, personal and advertising injury, and
20 cross liability coverage, covering claims which may arise from or out of IFHP's
21 performance of its obligations hereunder. Policy shall name the County of
22 Riverside, its Agencies, Districts, Special Districts, and Departments, their
23 respective directors, officers, Board of Supervisors, employees, elected or
24 appointed officials, agents or representatives as Additional Insured. Policy's limit
25 of liability shall not be less than \$1,000,000 per occurrence combined single limit.
26 If such insurance contains a general aggregate limit, it shall apply separately to
27 this Amended and Restated Covenant or be no less than two (2) times the
28 occurrence limit.

1 c) Vehicle Liability Insurance. If vehicles or mobile equipment are used in the
2 performance of the obligations under this Amended and Restated Covenant, then
3 IFHP shall maintain liability insurance for all owned, non-owned or hired vehicles
4 so used in an amount not less than \$1,000,000 per occurrence combined single
5 limit. If such insurance contains a general aggregate limit, it shall apply
6 separately to this Amended and Restated Covenant or be no less than two (2)
7 times the occurrence limit. Policy shall name the County of Riverside, its
8 Agencies, Districts, Special Districts, and Departments, their respective directors,
9 officers, Board of Supervisors, employees, elected or appointed officials, agents
10 or representatives as Additional Insured or provide similar evidence of coverage
11 approved by County's Risk Manager ("Risk Manager").

12 d) General Insurance Provisions – All Lines.

13 i) Any insurance carrier providing insurance coverage hereunder shall be
14 admitted to the State of California and have an A M BEST rating of not less
15 than A: VIII (A:8) unless such requirements are waived, in writing, by Risk
16 Manager. If Risk Manager waives a requirement for a particular insurer such
17 waiver is only valid for that specific insurer and only for one policy term.

18 ii) IFHP's insurance carrier(s) must declare its insurance self-insured retentions.
19 If such self-insured retentions exceed \$500,000 per occurrence such retentions
20 shall have the prior written consent of Risk Manager. Upon notification of
21 self-insured retention unacceptable to County, and at the election of Risk
22 Manager, IFHP's carriers shall either: (a) reduce or eliminate such self-
23 insured retention, or (b) procure a bond which guarantees payment of losses
24 and related investigations, claims administration, and defense costs and
25 expenses.

26 iii) IFHP shall cause IFHP's insurance carrier(s) to furnish the County of
27 Riverside with copies of the Certificate(s) of Insurance and Endorsements
28 effecting coverage as required herein, and 2) if requested to do so orally or in

1 writing by Risk Manager, provide copies of policies including all
2 Endorsements and all attachments thereto, showing such insurance is in full
3 force and effect. Further, said Certificate(s) and policies of insurance shall
4 contain the covenant of the insurance carrier(s) that thirty (30) days written
5 notice shall be given to the County of Riverside prior to any material
6 modification, cancellation, expiration or reduction in coverage of such
7 insurance. IFHP shall not continue operations until County has been furnished
8 Certificate(s) of Insurance and copies of endorsements and if requested,
9 copies of policies of insurance including all endorsements and any and all
10 other attachments as required herein. An individual authorized by the
11 insurance carrier to do so, on its behalf, shall sign the original endorsements
12 for each policy and the Certificate of Insurance.

13 iv) It is understood and agreed to by the parties hereto that IFHP's insurance shall
14 be construed as primary insurance, and County's insurance and/or deductibles
15 and/or self-insured retention's or self-insured programs shall not be construed
16 as contributory.

17 v) If, during the term of this Amended and Restated Covenant or any extension
18 thereof, there is a material change in the scope of services or there is a
19 material change in the equipment to be used in the performance of the scope
20 of work which will add additional exposures (such as the use of aircraft,
21 watercraft, cranes, etc.), then County reserves the right to adjust the types of
22 insurance required under this Amended and Restated Covenant and the
23 monetary limits of liability for the insurance coverage's currently required
24 herein, if; in Risk Manager's reasonable judgment, the amount or type of
25 insurance carried by IFHP has become inadequate.

26 vi) IFHP shall pass down the insurance obligations contained herein to all tiers of
27 subcontractors.

28 vii) IFHP agrees to notify County of any claim by a third party or any incident or

1 event that may give rise to a claim arising from the performance of this
2 Amended and Restated Covenant or the HOME Agreement.

3 6) HOLD HARMLESS/INDEMNIFICATION. IFHP shall indemnify and hold
4 harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments,
5 their respective directors, officers, Board of Supervisors, elected and appointed officials,
6 employees, agents and representatives (individually and collectively hereinafter referred to as
7 Indemnitees) from any liability whatsoever, based or asserted upon any services of IFHP, its
8 officers, employees, subcontractors, agents or representatives arising out of or in any way
9 relating to this Amended and Restated Covenant or the CDBG Loan Agreement, including but
10 not limited to property damage, bodily injury, or death or any other element of any kind or nature
11 whatsoever arising from the performance of IFHP, its officers, employees, subcontractors, agents
12 or representatives Indemnitors from this Amended and Restated Covenant and the CDBG Loan
13 Agreement. IFHP shall defend, at its sole expense, all costs and fees including, but not limited, to
14 attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any
15 claim or action based upon such alleged acts or omissions. With respect to any action or claim
16 subject to indemnification herein by IFHP, IFHP shall, at their sole cost, have the right to use
17 counsel of their own choice and shall have the right to adjust, settle, or compromise any such
18 action or claim without the prior consent of County; provided, however, that any such
19 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes IFHP's
20 indemnification to Indemnitees as set forth herein. IFHP's obligation hereunder shall be satisfied
21 when IFHP has provided to County the appropriate form of dismissal relieving County from any
22 liability for the action or claim involved. The specified insurance limits required in this Amended
23 and Restated Covenant shall in no way limit or circumscribe IFHP's obligations to indemnify
24 and hold harmless the Indemnitees herein from third party claims. In the event there is conflict
25 between this clause and California Civil Code Section 2782, this clause shall be interpreted to
26 comply with Civil Code 2782. Such interpretation shall not relieve the IFHP from indemnifying
27 the Indemnitees to the fullest extent allowed by law.

1 7) NOTICES. All Notices provided for in this Covenant shall be deemed when
2 personally delivered, or two (2) days following mailing by certified mail, return receipt
3 requested. All mailing shall be addressed to the respective parties at their addresses set forth
4 below, or at such other address as each party may designate in writing:

5 COUNTY

IFHP

6 Assistant Director, Housing
7 Riverside County
8 Economic Development Agency
9 5555 Arlington Avenue
 Riverside, CA 92504

 Attn: James Silverwood, President
 Indio Family Housing Partners, L.P.
 c/o Affirmed Housing Group, Inc.
 13520 Evening Creek Drive North, Suite 160
 San Diego, CA 92128

10 8) REMEDIES. County shall have the right, in the event of any breach of any such
11 agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law
12 or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or
13 covenant.

14 9) TERM. The non-discrimination covenants, conditions and restrictions contained
15 in Section 3 of this Covenant shall remain in effect in perpetuity. Every other covenant,
16 condition and restriction contained in this Covenant shall continue in full force and effect for the
17 Term, as defined in Section 1 of this Covenant.

18 10) NOTICE AND CURE. Prior to exercising any remedies hereunder, the County
19 shall give IFHP notice of such default. Any monetary default shall be cured within seven (7)
20 days of delivery of notice by County. Except as otherwise set forth herein, if a non-monetary
21 default is reasonably capable of being cured within sixty (60) days, IFHP shall have such period
22 to effect a cure prior to exercise of remedies by County. If the non-monetary default is such that
23 it is not reasonably capable of being cured within sixty (60) days, and IFHP (a) initiates
24 corrective action within said period, and (b) diligently, continually, and in good faith works to
25 effect a cure as soon as possible, then IFHP shall have such additional time as is reasonably
26 necessary to cure the default prior to exercise of any remedies by the County; but in no event no
27 later than ninety (90) days from delivery of notice.

28 If a violation of any of the covenants or provisions of this Amended and Restated

1 Covenant remains uncured after the respective time period set forth in this Section 10, County
2 and its successors and assigns, without regard to whether County or its successors and assigns is
3 an owner of any land or interest therein to which this Amended and Restated Covenants, may
4 institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such
5 violation or attempted violation or to compel specific performance by IFHP of its obligations
6 hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall
7 impair, damage or waive the right of any party entitled to enforce the provisions hereof or to
8 obtain relief against or recover for the continuation or repetition of such breach or violations or
9 any similar breach or violation hereof at any later time.

10 11) GOVERNING LAW; VENUE; SEVERABILITY. This Covenant shall be
11 governed by the laws of the State of California. Any legal action related to the performance or
12 interpretation of this Covenant shall be filed only in the Superior Court of the State of California
13 located in Riverside, California, and the parties waive any provision of law providing for a
14 change of venue to another location. In the event any provision in this Covenant is held by a
15 court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions
16 will nevertheless continue in full force without being impaired or invalidated in any way.

17 12) BINDING EFFECT. The rights and obligations of this Covenant shall bind and
18 inure to the benefit of the respective heirs, successors and assigns of the parties.

19 13) COUNTERPARTS. This Covenant may be signed by the different parties hereto
20 in counterparts, each of which shall be an original, but all of which together shall constitute one
21 and the same agreement.

22 14) PERMITTED MORTGAGES. No violation or breach of the covenants,
23 conditions, restrictions, provisions or limitations contained in this Amended and Restated
24 Covenant shall defeat or render invalid or in any way impair the lien or charge of any mortgage
25 permitted by the HOME Agreement or otherwise approved in writing by the County.

26 ///

27 [remainder of page intentionally blank]

28 [signatures on following page]

1 IN WITNESS WHEREOF, County and IFHP have executed this Covenant as of the date
2 first above written.

3 COUNTY:
4 County of Riverside, a political
5 Subdivision of the State of California

IFHP:
Indio Family Housing Partners, L.P.
a California limited partnership

6
7 By: _____
8 Jeff Stone, Chairman
9 Board of Supervisors

By: AHG Indio, LLC
a California limited liability company
Its: Administrative General Partner

10 Date: _____

By: Affirmed Housing Group, Inc.
a Delaware corporation
Its: Manager

11 ATTEST:
12 KECIA HARPER-IHEM
13 Clerk of the Board

By: 
James Silverwood
President

14
15 By: _____
16 Deputy

Date: 7.23.14

17 APPROVED AS TO FORM:
18 PAMELA J. WALLS, County Counsel

By: NEXUS For Affordable Housing, Inc.
a California non-profit corporation
Its: Managing General Partner

19 By: 
20 Jhaila R. Brown, Deputy County Counsel

By: _____
Shane Cowan, Executive Director

21 Date: _____

22
23
24
25
26 (COUNTY and IFHP signatures need to be notarized)
27
28

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA }

COUNTY OF San Diego }

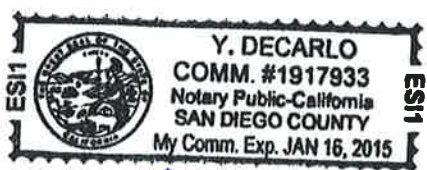
On July 23, 2014, before me, Y. Decarlo Public Notary
Date Here Insert Name and Title of the Officer

personally appeared James Silverwood
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 [Handwritten Signature]
Signature of Notary Public

1 IN WITNESS WHEREOF, County and IFHP have executed this Covenant as of the date
2 first above written.

3 COUNTY:

IFHP:

4 County of Riverside, a political
5 Subdivision of the State of California

Indio Family Housing Partners, L.P.
a California limited partnership

6
7 By: _____
8 Jeff Stone, Chairman
9 Board of Supervisors

By: AHG Indio, LLC
a California limited liability company
Its: Administrative General Partner

10 Date: _____

By: Affirmed Housing Group, Inc.
a Delaware corporation
Its: Manager

11
12 ATTEST:
13 KECIA HARPER-IHEM
14 Clerk of the Board

By: _____
James Silverwood
President

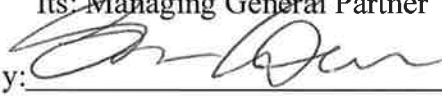
15 By: _____
16 Deputy

Date: _____

17 APPROVED AS TO FORM:
18 PAMELA J. WALLS, County Counsel

By: NEXUS For Affordable Housing, Inc.
a California non-profit corporation
Its: Managing General Partner

19 By: _____
20 Jhaila R. Brown, Deputy County Counsel

By: 
Shane Cowan, Executive Director

21 Date: 7/23

22
23
24
25
26 (COUNTY and IFHP signatures need to be notarized)
27
28

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA }

COUNTY OF Orange }

On July 23, 2014, before me, Kara S. Cappeluti, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Shane Cowan
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 *Kara S. Cappeluti*
Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 IN THE CITY OF INDIO, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY PARCEL MAP RECORDED JANUARY 23, 1968 IN BOOK 1, PAGE 11 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 616-090-002