

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

834



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
May 13, 2010

**SUBJECT:** Loan Agreement for the Use of Neighborhood Stabilization Program Funds with BIASA II, LP

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the attached Loan Agreement for the Use of Neighborhood Stabilization Program Funds with BIASA II, LP, a California Limited Partnership;
2. Approve the attached Deed of Trust with Assignment of Rents and Promissory Note;
3. Authorize the Assistant County Executive Officer/EDA or designee to execute a Subordination Agreement with Citibank, N.A., in an amount up to \$4,700,000 subject to approval by County Counsel;
4. Authorize the Chairman of the Board to sign the attached Loan Agreement and Deed of Trust; and
5. Authorize the Assistant County Executive Officer/EDA or designee to execute take all necessary steps to implement the Loan Agreement including, but not limited to, signing subsequent essential and relevant documents subject to approval by County Counsel.

**BACKGROUND:** (Commences on Page 2)

*Robert Field*

Robert Field  
Assistant County Executive Officer/EDA  
By Dan Martinez, EDA Managing Director

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 4,677,316	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	09/10

**COMPANION ITEM ON BOARD OF DIRECTORS AGENDA:** No

<b>SOURCE OF FUNDS:</b> Neighborhood Stabilization Program 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 L Sargent*  
Jennifer L Sargent

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Stone, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley  
Nays: None  
Absent: None  
Date: May 25, 2010  
xc: EDA

Kecia Harper-Ihem  
Clerk of the Board  
By: *[Signature]*  
Deputy

**Prev. Agn. Ref.:** 3:7 of 7/21/2009; 3.51 of 9/1/2009 | **District:** 5 | **Agenda Number:**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**3.16**

FORM APPROVED COUNTY COUNSEL  
DATE 5/21/10  
MICHELLE CLACK  
Departmental Concurrence

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

**BACKGROUND:**

On November 25, 2008, the Board of Supervisors approved the activity of acquisition, rehabilitation and rental of affordable multi-family properties as a component of Neighborhood Stabilization Program (NSP) which was enacted under Title III of Division B of the Housing and Economic Recovery Act of 2008.

On July 21, 2009, the Board of Supervisors approved a loan agreement for \$4,677,316 in NSP funds ("Prior NSP Loan") with BIASA, LP ("Prior Owner"), a California limited partnership, to acquire, rehabilitate and rent a partially completed, foreclosed and bank-owned 60-unit townhouse complex ("Property") within a designated NSP Target Area, as described in the 2008-2009 One Year Action Plan of the 2004-2009 Five-Year Consolidated Plan, in the city of Desert Hot Springs for the benefit of low- and very low-income households ("Project").

BIASA II, LP, a California limited partnership, is acquiring the Property from Prior Owner, who acquired it with the proceeds of the Prior NSP Loan. In its acquisition of the Property, the Prior Owner has complied with requirements and satisfied conditions relating to the use of NSP funds for acquisition of foreclosed property. The Prior Owner was unable to complete its rehabilitation of the Property and Prior Owner requests to sell Property to BIASA II, LP for a purchase price equal to the outstanding balance of the Prior NSP Loan and the repayment of the Prior Owner's NSP Loan in order to facilitate the new NSP Loan, in the amount of \$4,677,316 to BIASA II, LP.

The Project consists of all two-bedroom units. One unit will be set aside for an on-site manager. The Project site is approximately 4.43 acres with Assessor Parcel number 642-081-006 located along Hacienda Drive, between Verbena Drive and Tamar Drive, in the City of Desert Hot Springs.

The acquisition cost was \$3,533,766. Rehabilitation costs are estimated to be \$2,439,250. BIASA II, LP will reserve 30 units for rent to very low-income households and 29 units for rent to low-income households whose incomes do not exceed 60% of the area median income for the County, adjusted by family size at the time of occupancy. The period of affordability of the Project will be for fifty-five (55) years.

BIASA II, LP intends to use \$4,677,316 in NSP funds for acquisition and soft costs. The estimated total cost for the Project is approximately \$9,282,809. BIASA II, LP will secure a bank loan in the amount of \$1,520,000; a loan for \$750,000 from the Desert Hot Springs Redevelopment Agency; a limited partner tax credit equity contribution of \$2,017,862; solar rebates in the amount of \$6,250; and a deferred developer fee of \$311,381.

The County's NSP Loan will be in second position behind a Citibank construction loan and permanent first mortgage.

County Counsel has reviewed and approved as to form the attached Loan Agreement and Deed of Trust. Staff recommends that the Board approve the attached Loan Agreement and Deed of Trust.

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147

5/10/10, File No: NSP4-10-001-4th  
Hacienda Hills, Desert Hot Springs

NO FEE FOR RECORDING PURSUANT  
TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

County of Riverside  
Economic Development Agency  
3403 10<sup>th</sup> Street, Suite 500  
Riverside, CA 92501  
Attn. Mervyn Manalo

SPACE ABOVE THIS LINE FOR RECORDERS USE

**LOAN AGREEMENT FOR THE USE OF  
NEIGHBORHOOD STABILIZATION PROGRAM FUNDS**

This Agreement is made and entered into this 25<sup>th</sup> day of MAY, <sup>2010</sup>~~2009~~

by and between the COUNTY OF RIVERSIDE ("COUNTY"), a political subdivision of the State of California and BIASA II, LP, a California limited partnership ("OWNER"), whose Managing General Partner is HITZKE DEVELOPMENT CORPORATION, a California corporation.

WITNESSETH:

WHEREAS, the Neighborhood Stabilization Program ("NSP"), which was enacted under Title III of Division B of the Housing and Economic Recovery Act of 2008 ("HERA") and appropriated under Community Development Block Grant (CDBG) funds, was created under the heading of Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes; and

WHEREAS, the intent of NSP is to stabilize neighborhoods in areas with greatest need and stem the decline of house values of neighboring homes; and

WHEREAS, COUNTY has qualified as an "Urban County" for purposes of receiving CDBG funds, including NSP funds, which are to be used to assist and undertake essential community development and housing assistance activities pursuant to the Housing and Community Development Act of 1974, Title I, as amended, Public Law 93-383 (the "Act"); and

WHEREAS, OWNER is eligible under NSP to apply and receive NSP funds to

2010 MAY 25 10:15 AM  
RECORDED

MAY 25 2010 3:16  
2010-06-10 1546

1 perform those activities described herein; and

2 WHEREAS, OWNER proposes to utilize NSP funds for the acquisition and  
3 rehabilitation of a partially completed 60-unit townhouse complex ("Property") and rent to  
4 very low and low-income households within the city of Desert Hot Springs (the "Project"), as  
5 further described in **Exhibit A** which is attached hereto and by this reference incorporated  
6 herein; and

7 WHEREAS, the Project will be located within an area of greatest need inside a  
8 designated "Target Area" of the County of Riverside as defined in the COUNTY's 2008-2009  
9 One Year Action Plan ("Action Plan"); and

10 WHEREAS, thirty (30) units will be restricted at fifty percent (50%) of the area  
11 median income and twenty nine (29) units will be restricted at sixty percent (60%) of the area  
12 median income ("Assisted Unit or "Assisted Units"), adjusted by family size at the time of  
13 occupancy; and

14 WHEREAS, all NSP assisted activities described herein comply with the  
15 objectives as required under NSP;

16 WHEREAS, the NSP assisted activities described herein are consistent with the  
17 COUNTY's Consolidated Plan and Action Plan; and

18 WHEREAS, OWNER is acquiring the Property from an entity ("Prior Owner"),  
19 who acquired it with the proceeds of a loan from the COUNTY Neighborhood Stabilization  
20 Program Funds (the "Prior Owner's NSP Loan"). In its acquisition of the Property, the Prior  
21 Owner complied with all the various requirements and satisfied conditions relating to the use  
22 of Neighborhood Stabilization Program Funds for acquisition of foreclosed property. The  
23 Prior Owner was unable to complete its rehabilitation of the Property and the COUNTY  
24 consented to the sale of the Property to OWNER for a purchase price equal to the outstanding  
25 balance of the Prior Owner's NSP Loan and the repayment of the Prior Owner's NSP Loan in  
26 order to facilitate the NSP Loan to OWNER as contemplated herein.

27 NOW, THEREFORE, the COUNTY and OWNER mutually agree as follows:

28 1. PURPOSE. The COUNTY agrees to lend up to Four Million Six

1 Hundred Seventy Seven Thousand Three Hundred Sixteen Dollars (\$4,677,316) of NSP funds  
2 to OWNER (“NSP Loan”) upon the terms and conditions set forth herein. OWNER will  
3 borrow the NSP funds from the COUNTY for financing of acquisition and rehabilitation of the  
4 Property. OWNER promises and agrees to undertake and assist with the NSP assisted activities  
5 by utilizing such NSP funds, as identified in **Exhibit A**.

6 2. OWNER’S OBLIGATIONS. OWNER hereby agrees to undertake and  
7 complete the following activities, subject to its receipt of the NSP funds:

- 8 a. Timeline. Carry out the Project in accord with the timeline set  
9 forth in **Exhibit A**.
- 10 b. Recordation. OWNER shall execute a promissory note and  
11 execute and record a corresponding deed of trust in the official  
12 records of the County of Riverside.
- 13 c. Permits and Environmental Compliance. Before commencement  
14 of rehabilitation or other works of improvement upon the  
15 Property, OWNER shall, at its own expense, secure or cause to be  
16 secured any and all permits and approvals that may be required  
17 for rehabilitation of the Property pursuant to the applicable rules  
18 and regulations of the County of Riverside and any other  
19 governmental agency affected by such rehabilitation of work.  
20 OWNER shall, without limitation, apply for and secure any and  
21 all necessary studies required for Environmental Review, as  
22 described in **Section 19(d)**, and pay all costs, charges and fees  
23 associated therewith. The Project is conditioned upon the  
24 COUNTY’s determination to proceed with, modify, or cancel the  
25 Project based on the results of a subsequent Environmental  
26 Review.
- 27 d. Performance. Acquire and complete rehabilitation of the Property  
28 in accordance with the timeline set forth in **Exhibit A** and in

**Section 27.**

- e. Additional Funding.
  - i. Obtain a reservation of Federal and, if applicable, State Tax Credits from the California Tax Credit Allocation Committee (“TCAC”) in accordance with the timeline set forth in **Exhibit A.**
  - ii. Obtain a loan from the Desert Hot Springs Redevelopment Agency (the “Agency Loan”) in accordance with the timeline set forth in **Exhibit A.**
- f. Financing. In accordance with the timeline set forth in **Exhibit A**, submit to COUNTY for approval evidence that OWNER has obtained sufficient equity capital or has obtained firm and binding commitments for construction and permanent financing necessary to undertake the development and completion of the Project.
- g. Affordability. Operate the Project, in such a manner so that it will remain affordable to qualified households for the Affordability Period as defined in **Section 14.**
- h. Compliance. Implement and pursue the Project in full compliance with all applicable Federal, State and local codes, laws, regulations and ordinances as described in **Section 19.**

3. COUNTY’S OBLIGATIONS. COUNTY agrees to undertake and complete the following activities, subject to its receipt of NSP funds from the U.S. Department of Housing and Urban Development (“HUD”):

- a. Provide a total amount identified in **Section 1** in NSP funds to OWNER for financing acquisition and rehabilitation costs of the Property for the Project.
- b. Comply with all of its obligations as participating recipient under the applicable regulations set forth under HUD regulations.

1           4.     PRIOR COUNTY APPROVAL. OWNER shall obtain COUNTY'S  
2 approval, through its Economic Development Agency ("EDA"), of all items requiring such  
3 approval as described in this Agreement.

4           5.     NSP Loan. OWNER shall borrow the NSP funds from the COUNTY for  
5 financing of the Property for the Project under the following terms and conditions:

6           a.     Term. This Agreement shall become effective upon execution (the  
7 "Effective Date"), as defined in **Section 53**, and the maturity of  
8 the NSP Loan with respect to the Property shall be the first to  
9 occur of (i) July 1, 2067 or (ii) fifty-five (55) years from the  
10 issuance of the first Certificate of Occupancy (the "Term").

11           b.     Principal. The principal of the NSP Loan shall be the amount of  
12 NSP funds provided for acquisition and rehabilitation of the  
13 Property evidenced by a promissory note ("Note"), as shown in  
14 **Exhibit C**, which is attached hereto and by this reference  
15 incorporated herein, executed by OWNER in favor of the  
16 COUNTY in a form satisfactory to the COUNTY.

17           c.     Interest. The interest rate for the Note shall be zero percent (0%)  
18 per annum.

19           d.     Repayment. The Note shall provide the following:

20           1) The NSP Loan will accrue interest at a rate of zero percent  
21 (0%) per annum, except in the case of default as hereinafter  
22 provided, and shall be repaid on an annual basis from the  
23 Project's Residual Receipts as defined herein;

24           2) Residual Receipts shall be determined based on a review of  
25 certified financial statements for the Project. Project Residual  
26 Receipts are defined as gross receipts, not including interest  
27 on required reserve accounts, less the following:

28           i)     auditing and accounting fees;

- 1 ii) operating expenses;
- 2 iii) a property management fee not to exceed \$40 per unit
- 3 per month, increased annually by an amount equal to the
- 4 increase in the Consumer Price Index (CPI);
- 5 iv) an Investor Annual Review Fee not to exceed \$5,000;
- 6 v) reserves;
- 7 vi) replacement reserves limited to \$250 per Assisted Unit
- 8 annually;
- 9 vii) deferred developer's fee;
- 10 viii) partnership management fees provided under OWNER'S
- 11 partnership agreement not to exceed \$25,000 per year;
- 12 and
- 13 ix) payments of principal and interest on amortized loans
- 14 and indebtedness which have been approved by the
- 15 COUNTY.

16 3) The Note shall be repaid according to the following:

- 17 i) Seventy percent (70%) of the Project's Residual
- 18 Receipts shall be paid towards the payment of the
- 19 Agency Loan;
- 20 ii) Twenty-five percent (25%) of the Project's Residual
- 21 Receipts shall be paid to the OWNER; and
- 22 iii) The remaining five percent (5%) of the Project's
- 23 Residual Receipts shall be paid towards the payment of
- 24 the NSP Loan.

25 e. Security. The NSP Loan shall be secured by a "Deed of Trust" as  
26 shown in **Exhibit B**, which is attached hereto and by this  
27 reference incorporated herein, recorded against the Property (the  
28 "Deed of Trust"). OWNER hereby agrees that the Deed of Trust



shall be in the second position.

- f. Prepayment. Prepayment of principal and/or interest may occur at any time without penalty. The requirements of **Section 19**, Compliance with Laws and Regulations, however, shall remain in full force and effect for a term specified in **Section 6** hereof.

6. TERM OF AGREEMENT. This Agreement shall become effective upon execution (the "Effective Date"), as defined in **Section 53**, and the maturity of the NSP Loan with respect to the Property shall be the first to occur of (i) July 1, 2067 or (ii) fifty-five (55) years from the issuance of the first Certificate of Occupancy (the "Term").

7. OWNER REPRESENTATIONS. OWNER represents and warrants to COUNTY as follows:

- a. Authority. OWNER is a duly organized limited partnership in good standing under the laws of the State of California. The copies of the documents evidencing OWNER's organization that have been delivered to the COUNTY, are true and complete copies of the originals, amended to the date of this Agreement. OWNER has full right, power and lawful authority to accept the conveyance of the Property for the Project and undertake all obligations as provided herein. OWNER's execution, performance and delivery of this Agreement has been fully authorized by all requisite actions on the part of OWNER.
- b. No Conflict. To the best of OWNER's knowledge, OWNER's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under contract, agreement or order to which OWNER is a party or by which it is bound.
- c. No Bankruptcy. OWNER is not the subject of a bankruptcy proceeding.

1                   d.     Prior to Closing. OWNER shall, upon learning of any fact or  
2                   condition which would cause any of the warranties and  
3                   representations in this Agreement not to be true as of Closing,  
4                   immediately give written notice such fact or condition to  
5                   COUNTY. Such exception(s) to a representation shall not be  
6                   deemed a breach by OWNER hereunder, but shall constitute an  
7                   exception which COUNTY shall have the right to approve or  
8                   disapprove if such exception would have an effect on the value or  
9                   operation of the Project.

10                8.     COMPLETION SCHEDULE. OWNER shall proceed consistent with the  
11                completion schedule set forth in **Exhibit A** and with **Section 27**, as the same may be amended  
12                in writing by the parties from time to time, and subject to force majeure delays.

13                9.     EXTENSION OF TIME. COUNTY may grant an extension to the  
14                completion schedule for the purpose of completing OWNER's activities which cannot be  
15                completed as outlined in **Exhibit A**. OWNER shall request said extension in writing, stating  
16                the reasons therefore, and may be granted only by receiving written approval from COUNTY.  
17                Every term, condition, covenant, and requirement of this Agreement shall continue in full force  
18                and effect during the period of any such extension.

19                10.    LETTER TO PROCEED. OWNER shall neither initiate nor incur any  
20                expenses for NSP funded activity covered under the terms of this Agreement prior to receiving  
21                written authorization to proceed.

22                11.    REALLOCATION OF FUNDS. If eighty percent (80%) of NSP funds  
23                have not been drawn down after eight (8) months from the date of this Agreement, then the  
24                balance of the NSP funds which have not been drawn down may be reallocated by COUNTY  
25                after thirty (30) days' prior written notice is given and an opportunity to cure is given to  
26                OWNER for a period of sixty (60) days. Upon such reallocation, this Agreement shall be  
27                terminated and be of no further force and effect and OWNER shall be released and discharged  
28                from any obligations under this Agreement.

1           12.    CONDITIONS FOR DISPOSITION OF FUNDS. COUNTY's Board of  
2 Supervisors shall determine the final disposition and distribution of all funds received by  
3 COUNTY under NSP. The Project is conditioned upon the COUNTY's determination to  
4 proceed with, modify, or cancel the Project based on the results of a subsequent Environmental  
5 Review as required under **Section 19(d)**.

6           COUNTY, through its EDA, shall: (1) make payments of the NSP Loan to  
7 OWNER as specified in **Exhibit A**, and (2) monitor the Project to ensure compliance with  
8 applicable federal, state and local laws, regulations, ordinances and the terms of this  
9 Agreement.

10           There will be no disbursement of funds for acquisition costs for the Property into  
11 escrow until the following events first occur:

- 12           a.    OWNER shall execute this NSP Loan Agreement.
- 13           b.    OWNER shall provide documentation to support compliance with  
14                eligibility requirements for the Property.
- 15           c.    [Intentionally Omitted]
- 16           d.    [Intentionally Omitted]
- 17           e.    Prior to closing of escrow, OWNER shall provide at its expense, a  
18                Preliminary Title Report, signed Purchase and Sale Agreement  
19                and estimated closing cost statement for the Property from escrow  
20                to COUNTY.
- 21           f.    OWNER shall provide to COUNTY Escrow Instructions with  
22                respect to the Property to be acquired.
- 23           g.    [Intentionally Omitted]

24           There will be no disbursement of funds for rehabilitation costs for the Project  
25 until the following events first occur with respect to the Property:

- 26           h.    OWNER shall provide at its expense an updated Preliminary Title  
27                Report for the Property evidencing the recordation of all  
28                documents to COUNTY.

- 1 i. If Davis Bacon wages are required to be paid, then OWNER must  
2 hire a qualified professional firm or assign experienced staff to  
3 review and monitor Davis-Bacon prevailing wage compliance for  
4 all submissions of contractors certified payrolls to the COUNTY.
- 5 j. OWNER must provide satisfactory evidence that it has secured  
6 any and all permits and approvals which may be required for  
7 rehabilitation of the Property pursuant to the applicable rules and  
8 regulations of the County and Cities where the Property is located  
9 and any other governmental agency affected by such construction  
10 of work.
- 11 k. OWNER shall provide a detailed Rehabilitation Plan and  
12 timetable to complete the acquisition and rehabilitation of the  
13 Property and rental of the Assisted Units in accordance with the  
14 completion schedule shown in **Exhibit A** including a detailed line  
15 item rehabilitation cost budget per unit for review and approval by  
16 COUNTY.
- 17 1. OWNER shall provide duly executed documents and instruments  
18 showing the ownership of the Property as specifically identified in  
19 **Exhibit A**.

20 COUNTY will retain ten percent (10%) of the final NSP fund disbursement.  
21 COUNTY shall release final draw down of NSP funds for rehabilitation applicable to the  
22 Property following receipt of all of the following Closing Documents from OWNER with  
23 respect to the Property:

- 24 1) unconditional lien release from general contractor and any  
25 subcontractors;
- 26 2) recorded Notice of Completion;
- 27 3) architect certification identifying units that are accessible  
28 to individuals with mobility impairments and units that are

1 accessible to individuals with sensory impairments in  
2 compliance with Section 504 of the Rehabilitation Act of  
3 1973, as described in **Section 19(i)**;

- 4 4) if applicable, all remaining Davis Bacon documentation, if  
5 any, including, but not limited to, complete certified  
6 payrolls, Section 3 certifications, fringe benefit forms, and  
7 certificates of authorization and understanding;
- 8 5) final Contract and Subcontract Activity report, Minority  
9 Business Enterprise/Women Business Enterprise  
10 (MBE/WBE) report, HUD form 2516;
- 11 6) tenant checklist of Assisted Units;
- 12 7) proposed rents for Assisted Units;
- 13 8) Affirmative Fair Housing Marketing Plan – Multifamily  
14 Housing, HUD form 935.2A, as described in **Section**  
15 **19(l)**;
- 16 9) Tenant Selection Policy;
- 17 10) Management Plan;
- 18 11) final development costs and project budget;
- 19 12) final sources and uses of funds; and
- 20 13) final Certified Public Accountant construction cost  
21 certification.

22 13. DISTRIBUTION OF FUNDS. The Disaster Recovery Grant Reporting  
23 (DRGR) system was developed by HUD's Office of Community Planning and Development  
24 and will be utilized for NSP. The DRGR system is a computerized system which manages,  
25 disburses, collects, and reports information on the use of NSP funds in the United States  
26 Treasury Account.

27 Any disbursement of funds is expressly conditioned upon the satisfaction  
28 of conditions set forth in **Section 12**. Subsequent to acquisition of the Property, COUNTY

1 shall pay OWNER for rehabilitation costs on a "cost-as-incurred" basis for all NSP-eligible  
2 approved costs on a monthly basis. All disbursements of NSP funds for rehabilitation will be  
3 made within thirty (30) days after OWNER has submitted its letter identifying payments made  
4 and requesting reimbursement.

5 COUNTY will retain ten percent (10%) of the final NSP fund  
6 disbursement and COUNTY shall release final draw down of NSP funds following receipt of  
7 all of the items listed in **Section 12**.

8 14. TERMS OF AFFORDABILITY. The period of affordability for the  
9 Property (the "Affordability Period") shall be fifty-five (55) years from the issuance of the first  
10 Certificate of Occupancy.

11 15. INSURANCE. Without limiting or diminishing OWNER's obligation to  
12 indemnify or hold the COUNTY harmless, OWNER shall procure and maintain or cause to be  
13 maintained, at its sole cost and expense, the following insurance coverage's during the term of  
14 this Agreement.

15 a. Worker's Compensation Insurance.

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

25 b. Commercial General Liability Insurance.

26 Commercial General Liability insurance coverage, including but  
27 not limited to, premises liability, contractual liability, products  
28 and completed operations liability, personal and advertising

1 injury, and cross liability coverage, covering claims which may  
2 arise from or out of OWNER'S performance of its obligations  
3 hereunder. Policy shall name the County of Riverside as  
4 additionally insured. Policy's limit of liability shall not be less  
5 than \$1,000,000 per occurrence combined single limit. If such  
6 insurance contains a general aggregate limit, it shall apply  
7 separately to this Agreement or be no less than two (2) times the  
8 occurrence limit.

9 c. Vehicle Liability Insurance.

10 If vehicles or mobile equipment are used in the performance of  
11 the obligations under this Agreement, then OWNER shall  
12 maintain liability insurance for all owned, non-owned or hired  
13 vehicles so used in an amount not less than \$1,000,000 per  
14 occurrence combined single limit. If such insurance contains a  
15 general aggregate limit, it shall apply separately to this Agreement  
16 or be no less than two (2) times the occurrence limit. Policy shall  
17 name the County of Riverside as Additionally Insured.

18 d. General Insurance Provisions – All Lines.

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

26 2) OWNER'S insurance carrier(s) must declare its  
27 insurance self-insured retentions. If such self-insured retentions  
28 exceed \$500,000 per occurrence such retentions shall have the

1 prior written consent of the COUNTY Risk Manager before the  
2 commencement of operations under this Agreement. Upon  
3 notification of self insured retention unacceptable to the  
4 COUNTY, and at the election of the COUNTY's Risk Manager,  
5 OWNER'S carriers shall either; (a) reduce or eliminate such self-  
6 insured retention as respects this Agreement with the COUNTY,  
7 or (b) procure a bond which guarantees payment of losses and  
8 related investigations, claims administration, and defense costs  
9 and expenses.

10 3) OWNER shall cause OWNER's insurance carrier(s) to  
11 furnish the County of Riverside with either 1) a properly executed  
12 original Certificate(s) of Insurance and certified original copies of  
13 Endorsements effecting coverage as required herein, and 2) if  
14 requested to do so orally or in writing by the COUNTY Risk  
15 Manager, provide original Certified copies of policies including  
16 all Endorsements and all attachments thereto, showing such  
17 insurance is in full force and effect. Further, said Certificate(s)  
18 and policies of insurance shall contain the covenant of the  
19 insurance carrier(s) that thirty (30) days written notice shall be  
20 given to the County of Riverside prior to any material  
21 modification, cancellation, expiration or reduction in coverage of  
22 such insurance. In the event of a material modification,  
23 cancellation, expiration, or reduction in coverage, this Agreement  
24 shall terminate forthwith, unless the COUNTY receives, prior to  
25 such effective date, another properly executed original Certificate  
26 of Insurance and original copies of endorsements or certified  
27 original policies, including all endorsements and attachments  
28 thereto evidencing coverage's set forth herein and the insurance



1 required herein is in full force and effect. OWNER shall not  
2 commence operations until the COUNTY has been furnished  
3 original Certificate (s) of Insurance and certified original copies  
4 of endorsements and if requested, certified original policies of  
5 insurance including all endorsements and any and all other  
6 attachments as required in this Section. An individual authorized  
7 by the insurance carrier to do so, on its behalf, shall sign the  
8 original endorsements for each policy and the Certificate of  
9 Insurance.

10 4) It is understood and agreed to by the parties hereto that  
11 OWNER's insurance shall be construed as primary insurance, and  
12 the COUNTY's insurance and/or deductibles and/or self-insured  
13 retention's or self-insured programs shall not be construed as  
14 contributory.

15 5) If, during the term of this Agreement or any extension  
16 thereof, there is a material change in the scope of services; or,  
17 there is a material change in the equipment to be used in the  
18 performance of the scope of work which will add additional  
19 exposures (such as the use of aircraft, watercraft, cranes, etc.); or,  
20 the term of this Agreement, including any extensions thereof,  
21 exceeds five (5) years the COUNTY reserves the right to adjust  
22 the types of insurance required under this Agreement and the  
23 monetary limits of liability for the insurance coverage's currently  
24 required herein, if, in the COUNTY Risk Manager's reasonable  
25 judgment, the amount or type of insurance carried by OWNER  
26 has become inadequate.

27 6) OWNER shall pass down the insurance obligations  
28 contained herein to all tiers of subcontractors working under this

1 Agreement.

2 7) The insurance requirements contained in this  
3 Agreement may be met with a program(s) of self-insurance  
4 acceptable to the COUNTY.

5 8) OWNER agrees to notify COUNTY of any claim by a  
6 third party or any incident or event that may give rise to a claim  
7 arising from the performance of this Agreement.

8 16. FINANCIAL RECORDS. OWNER shall establish and maintain  
9 financial, programmatic, statistical, and other supporting records of its operations and financial  
10 activities in accordance with 24 CFR Part 84 or 85 as applicable and Part 570 and OMB  
11 Circular Nos. A-102, revised, A-110, A-87, and A-122, as applicable and as they relate to the  
12 acceptance and use of federal funds under this Agreement. Records shall be open to inspection  
13 and audit by authorized representatives of the COUNTY, HUD, and the Comptroller General  
14 of the United States or any of their authorized representatives, at any time during normal  
15 business hours, as often as deemed necessary, to audit, examine, and make excerpts or  
16 transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by  
17 OWNER within thirty (30) days after receipt by OWNER. Failure of OWNER to comply with  
18 the above audit requirements will constitute a violation of this contract and may result in the  
19 withholding of future payments. COUNTY, HUD, and the Comptroller General, or any of their  
20 representatives, have the right of access to any pertinent books, documents, papers, or other  
21 records of OWNER, in order to make audits, examinations, excerpts, and transcripts. Said  
22 records shall be retained for such time as may be required by the regulations of the  
23 Neighborhood Stabilization Program, but in no case for less than five (5) years after the Project  
24 completion date; except that records of individual tenant income verifications, project rents,  
25 and project inspections must be retained for the most recent five (5) year period, until five (5)  
26 years after the affordability period terminates. If any litigation, claim, negotiation, audit, or  
27 other action has been started before the expiration of the regular period specified, the records  
28 must be retained until completion of the action and resolution of all issues which arise from it,

1 or until the end of the regular period, whichever is later.

2 17. PROJECT MONITORING AND EVALUATION. Except as otherwise  
3 provided for in this Agreement, OWNER shall maintain and submit records to the COUNTY  
4 within ten (10) business days of the COUNTY's request which clearly documents OWNER's  
5 performance under each requirement of NSP. A list of document submissions and timeline are  
6 shown in **Exhibit A** and such list may be amended from time to time subject to HUD and  
7 COUNTY reporting requirements.

8 18. ACCESS TO PROJECT SITE. The COUNTY and HUD shall have the  
9 right to visit any Project site at all reasonable times, and upon completion of the Project upon  
10 reasonable written notice to OWNER, to review the operation of the Project in accordance with  
11 this Agreement.

12 19. COMPLIANCE WITH LAWS AND REGULATIONS. By executing this  
13 Agreement, OWNER hereby certifies that it will adhere to and comply with all federal, state  
14 and local laws, regulations and ordinances. In particular, OWNER shall comply with the  
15 following as they may be applicable to OWNER of funds granted pursuant to the NSP  
16 Program:

- 17 a. NSP regulations as set forth under HERA, as it now exists and  
18 may hereafter be amended, and Federal Register / Vol. 73, No.  
19 194 / Monday, October 6, 2008 / Docket No. FR-5255-N-01,  
20 Notice of Allocations, Application Procedures, Regulatory  
21 Waivers Granted to and Alternative Requirements for Emergency  
22 Assistance for Redevelopment of Abandoned and Foreclosed  
23 Homes Grantees Under the Housing and Economic Recovery Act,  
24 2008.
- 25 b. CDBG statutory and regulatory provisions, including those at 24  
26 CFR Part 570 subpart A, C, D, J, K, and O, as appropriate, shall  
27 apply.
- 28 c. Other Federal requirements and non-discrimination. As set forth

1 in 24 CFR Part 5, subpart A, OWNER is required to include the  
2 following requirements: non-discrimination and equal  
3 opportunity; disclosure; debarred, suspended, or ineligible  
4 contractors; and drug-free workplace.

5 d. Environmental Review. The Project will be subject to  
6 environmental review prior to acquisition, demolition,  
7 rehabilitation or new construction. The environmental effects of  
8 each activity carried out with NSP funds must be assessed in  
9 accordance with the provisions of the National Environmental  
10 Policy Act of 1969 (NEPA) and related authorities listed at 24  
11 CFR Part 58. The Project is required to comply with Laws and  
12 Authorities of §58.5: Historic Preservation, Floodplain &  
13 Wetlands, Coastal Zone, Aquifers, Endangered Species, Rivers,  
14 Air, Farmlands, HUD Environmental Standards and  
15 Environmental Justice.

16 e. Displacement, Relocation, and Acquisition. The Property must be  
17 vacant for a minimum period of ninety (90) days prior to the  
18 Initial Offer. The Project is subject to relocation requirements of  
19 Title II and the acquisition requirements of Title III of the  
20 Uniform Relocation Act (URA) and Real Property Acquisition  
21 Policies Act of 1970, and the implementing regulations at 24 CFR  
22 Part 42.

23 f. Prevailing Wages and Compliance with Davis-Bacon Act.  
24 OWNER shall comply with any applicable labor regulations and  
25 all other State and Federal Laws in connection with the  
26 construction of the improvements which comprise the Project,  
27 including if applicable, requirements relating to the Davis-Bacon  
28 Act (40 U.S.C. 276a--276a-5). OWNER agrees and acknowledges

1 that it is the responsibility of OWNER to obtain a legal  
2 determination, at OWNER's sole cost and expenses as to whether  
3 prevailing wages must be paid during the rehabilitation of the  
4 Project. OWNER agrees to identify, defend, and hold COUNTY  
5 harmless from and against any and all liability arising out of and  
6 related to OWNER's failure to comply with any and all applicable  
7 prevailing wage requirements.

8 g. Lead-based Paint. Housing assisted with NSP funds is subject to  
9 the lead-based paint regulations of 24 CFR Part 35, subparts A, B,  
10 J, K, and R, issued pursuant to the Lead-Based Paint Poisoning  
11 Prevention Act (42 U.S.C. 4821, et seq.).

12 h. Conflict of Interest. In the procurement of property and services  
13 by OWNER, the conflict of interest provisions at §570.611 shall  
14 apply.

15 i. Section 504 of the Rehabilitation Act of 1973; Housing  
16 accessibility requirement at 24 CFR Part 8, implementing Section  
17 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The  
18 design and construction of multi-family dwellings as defined at 24  
19 CFR 100.201 must comply with the requirements set forth in 24  
20 CFR 100.205 implementing the Fair Housing Act. For new  
21 construction of multi-family projects, 5 percent (5%) of the units  
22 (but not less than one unit) must be accessible to individuals with  
23 mobility impairments, and an additional 2 percent (2%) of the  
24 units (but not less than one unit) must be accessible to individuals  
25 with sensory impairments. Dwelling units designed and  
26 constructed in accordance with the Uniform Federal Accessibility  
27 Standards (UFAS) will be deemed to comply with the Section 504  
28 regulation.

1           j.       Section 3 of the Housing and Urban Development Act of 1968.

2                   To the greatest extent feasible, opportunities for training and  
3                   employment arising from NSP funds will be provided to low-  
4                   income persons residing in the Target Area. To the greatest extent  
5                   feasible, contracts for work to be performed in connection with  
6                   NSP funds will be awarded to business concerns that are located  
7                   in or owned by persons residing in the Target Area. Contracts  
8                   funded from Section 3 must abide by the Section 3 Clause  
9                   prescribed at 24 CFR 135.38.

10           k.       Compliance with anti-discrimination laws. Conformity with title  
11                   VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair  
12                   Housing Act (42 U.S.C. 3601-3619), and implementing  
13                   regulations.

14           l.       Affirmative marketing and minority outreach program. OWNER  
15                   must adopt affirmative marketing procedures and requirements.  
16                   These should include:

- 17                   1)       Methods for informing the public, owners, and potential  
18                   tenants about Federal fair housing laws and the affirmative  
19                   marketing policy.
- 20                   2)       Requirements and practices that OWNER must adhere to  
21                   in order to carry out the affirmative marketing procedures  
22                   and requirements.
- 23                   3)       Procedures to be used by OWNER to inform and solicit  
24                   applications from persons in the housing market areas that  
25                   are not likely to apply without special outreach.
- 26                   4)       Records will be kept describing actions taken by OWNER  
27                   to affirmatively market units and to assess the results of  
28                   these actions.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5) A description of how OWNER will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

6) OWNER should prescribe procedures to establish and oversee a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by OWNER with such persons or entities, public and private, in order to facilitate the activities of the County to provide affordable housing authorized under this Act or any other Federal housing law. Affirmative steps to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services are at 24 CFR 85.36(e).

7) Anti-lobbying. OWNER must comply with restrictions on lobbying required by 24 CFR Part 87.

m. Model Energy Code published by the Council of American Building Officials.

n. Consultant Activities. Pursuant to 24 CFR 570.200(d), no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds.

1                   o.     Uniform Administrative Requirements of 24 CFR Part 84 or 85 as  
2                             applicable, Part 570 and OMB Circular Nos. A-102, revised, A-  
3                             110 (implemented at 24 CFR Part 84), A-87, and A-122, as  
4                             applicable and as they relate to the acceptance and use of federal  
5                             funds under this Agreement.

6                   p.     OWNER shall include written agreements that include all  
7                             provisions of this section if OWNER provides NSP funds to for-  
8                             profit owners or developers, non-profit owners or developers, sub-  
9                             recipients, homeowners, homebuyers, tenants receiving tenant-  
10                            based rental assistance, or contractors.

11                   20.    [Intentionally Omitted]

12                   21.    INCOME TARGETING REQUIREMENTS. OWNER will set aside  
13                            thirty units (30) of the Project to be limited to households whose incomes do not exceed fifty  
14                            percent (50%) of the median family income for the County of Riverside, adjusted by family  
15                            size at the time of occupancy. The balance of the units, twenty nine (29) units will be limited to  
16                            households whose incomes do not exceed sixty percent (60%) of the median family income for  
17                            the County of Riverside, adjusted by family size at the time of occupancy.

18                   22.    RENT LIMITATIONS. OWNER agrees that all Assisted Units shall  
19                            remain affordable in accordance with the rent limitations set forth in California Health and  
20                            Safety Code Section 50053(b)(2) as the minimal compliance with this standard, which is  
21                            consistent with the COUNTY's Consolidated Plan and Action Plan. The maximum monthly  
22                            allowances for utilities and services (excluding telephone) will not exceed utility allowance set  
23                            by the Housing Authority of the County of Riverside.

24                   23.    TENANT PROTECTIONS. OWNER shall provide protection to the  
25                            tenants in accordance to the requirements set forth at 24 CFR 92.253 and described as follows:

26                            a.     Provide written lease agreement for not less than one year, unless  
27   by mutual agreement between the tenant and OWNER. COUNTY  
28   shall review the initial form of the lease agreement prior to



1 OWNER executing any leases and, provided that OWNER uses  
2 the approved lease form, OWNER shall be permitted to enter into  
3 residential leases without the COUNTY's prior written consent.

4 b. Prohibited Lease Terms. The rental agreement/lease may not  
5 contain any of the following provisions:

6 (1) Agreement to be sued. Agreement by the tenant to be  
7 sued, to admit guilt or to a judgment in favor of OWNER in a lawsuit  
8 brought in connection with the lease.

9 (2) Treatment of property. Agreements by tenant that  
10 OWNER may take, hold, or sell personal property of household members  
11 without notice to the tenant and a court decision on the rights of the  
12 parties. This prohibition, however, does not apply to an agreement by the  
13 tenant concerning disposition of personal property remaining in the  
14 housing unit after the tenant has moved out of the unit. OWNER may  
15 dispose of this personal property in accordance with State law.

16 (3) Excusing OWNER from responsibility. Agreement by the  
17 tenant not to hold OWNER or OWNER's agents legally responsible for  
18 any action or failure to act, whether intentional or negligent.

19 (4) Waiver of notice. Agreement of the tenant that OWNER  
20 may institute a lawsuit without notice to the tenant.

21 (5) Waiver of legal proceeding. Agreement by the tenant that  
22 the OWNER may evict the tenant or household members without  
23 instituting a civil court proceeding in which the tenant has the  
24 opportunity to present a defense, or before a court decision on the rights  
25 of the parties.

26 (6) Waiver of a jury trial. Agreement by the tenant to waive  
27 any right to a trial by jury.

28 (7) Waiver of right to appeal court decision. Agreement by the

1 tenant to waive the tenant's right to appeal, or to otherwise challenge in  
2 court, a court decision in connection with the lease.

3 (8) Tenant chargeable with cost of legal actions regardless of  
4 outcome. Agreement by the tenant to pay attorneys' fees or other legal  
5 costs even if the tenant wins in a court proceeding by OWNER against  
6 the tenant. The tenant, however, may be obligated to pay costs if the  
7 tenant loses.

8 24. FEDERAL REQUIREMENTS. OWNER shall comply with the  
9 provisions of NSP and any amendments thereto and all applicable federal regulations and  
10 guidelines now or hereafter enacted.

11 25. SALE OR TRANSFER OF THE PROJECT. OWNER hereby covenants  
12 and agrees not to sell, transfer or otherwise dispose of the Project or any portion thereof,  
13 without obtaining the prior written consent of the COUNTY, which consent shall be  
14 conditioned solely upon receipt by the COUNTY of reasonable evidence satisfactory to the  
15 COUNTY that transferee has assumed in writing and in full, and is reasonably capable of  
16 performing and complying with OWNER's duties and obligations under this Agreement and  
17 where upon OWNER shall be released of all obligations hereunder which accrue from and  
18 after the date of such sale.

19 26. INDEPENDENT CONTRACTOR. OWNER and its agents, servants and  
20 employees shall act at all times in an independent capacity during the term of this Agreement,  
21 and shall not act as, shall not be, nor shall they in any manner be construed to be agents,  
22 officers, or employees of COUNTY.

23 27. PERFORMANCE REQUIREMENTS. OWNER must complete the  
24 following activities within the time specified:

- 25 a. Acquisition of the Property within four (4) months from the  
26 Effective Date; and  
27 b. Rehabilitation of the Property within twelve (12) months from  
28 Effective Date.

1           28.    NONDISCRIMINATION. OWNER shall abide by 24 CFR 570.602  
2 which requires that no person in the United States shall on the grounds of race, color, national  
3 origin, religion, or sex be excluded from participation in, be denied the benefits of, or be  
4 subjected to discrimination under any program or activity receiving Federal financial assistance  
5 including NSP. Under the Act, Section 109 directs that the prohibitions against discrimination  
6 on the basis of age under the Age Discrimination Act and the prohibitions against  
7 discrimination on the basis of disability under Section 504 shall apply to programs or activities  
8 receiving Federal financial assistance under Title I programs. The policies and procedures  
9 necessary to ensure enforcement of section 109 are codified in 24 CFR Part 6.

10           29.    PROHIBITION AGAINST CONFLICTS OF INTEREST:

- 11           a.     OWNER and its assigns, employees, agents, consultants, officers  
12                 and elected and appointed officials shall become familiar with and  
13                 shall comply with the conflict of interest provisions in OMB  
14                 Circular A-110, 24 CFR 85.36, 24 CFR 84.42, 24 CFR 570.611  
15                 and Policy Manual #A-11, attached hereto as **Exhibit F** which is  
16                 attached hereto and by this reference incorporated herein.
- 17           b.     OWNER understands and agrees that no waiver or exception can  
18                 be granted to the prohibition against conflict of interest except  
19                 upon written approval of HUD pursuant to 24 CFR 92.356(d).  
20                 Any request by OWNER for an exception shall first be reviewed  
21                 by COUNTY to determine whether such request is appropriate for  
22                 submission to HUD.
- 23           c.     Prior to any funding under this Agreement, OWNER shall provide  
24                 COUNTY with a list of all employees, agents, consultants,  
25                 officers and elected and appointed officials who are in a position  
26                 to participate in a decision-making process, exercise any functions  
27                 or responsibilities, or gain inside information with respect to the  
28                 NSP activities funded under this Agreement. OWNER shall also

1 promptly disclose to COUNTY any potential conflict, including  
2 even the appearance of conflict that may arise with respect to the  
3 NSP activities funded under this Agreement.

- 4 d. Any violation of this section shall be deemed a material breach of  
5 this Agreement, and the Agreement shall be immediately  
6 terminated by the COUNTY.

7 30. EVENTS OF DEFAULT. The occurrence of any of the following events  
8 shall constitute an "Event of Default" under this Agreement:

- 9 a. Monetary Default. (1) OWNER's failure to pay when due any  
10 sum payable under any Note, or any advance made by the  
11 COUNTY under this Agreement; (2) OWNER's or any agent of  
12 OWNER's use of NSP funds for costs inconsistent with terms and  
13 restrictions set forth in this Agreement; (3) OWNER's failure to  
14 obtain and maintain the insurance coverage required under this  
15 Agreement; (4) OWNER's or any agent of OWNER's failure to  
16 make any other payment of any assessment or tax due under this  
17 Agreement;

- 18 b. Non-Monetary Default - Operation. (1) Discrimination by  
19 OWNER or OWNER's agent on the basis of characteristics  
20 prohibited by this Agreement or applicable law; (2) the imposition  
21 of any encumbrances or liens on the Project without the  
22 COUNTY's prior written approval that are prohibited under this  
23 Agreement or that have the effect of reducing the priority or  
24 invalidating the NSP Deed of Trust; (3) any material adverse  
25 change in the condition of OWNER or the Project or permanent  
26 financing or funding for the Project that gives the COUNTY  
27 reasonable cause to believe that the Project cannot be operated  
28 according to the terms of this Agreement;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- c. General Performance of Loan Obligations. Any substantial or continuous or repeated breach by OWNER or OWNER's agents of any material obligations on OWNER imposed in the NSP Agreement;
- d. General Performance of Other Obligations. Any substantial or continuous or repeated breach by OWNER or OWNER's agents of any material obligations on the Project imposed by any other agreement with respect to the financing, development, or operation of the Project; whether or not the COUNTY is a party to such agreement; but only following any applicable notice and cure periods with respect to any such obligation;
- e. Representations and Warranties. A determination by the COUNTY that any of OWNER's representations or warranties made in this Agreement, any statements made to the COUNTY by OWNER, or any certificates, documents, or schedules supplied to the COUNTY by OWNER were untrue in any material respect when made, or that OWNER concealed or failed to disclose a material fact from the COUNTY.
- f. Damage to Project. In the event that any Assisted Unit is materially damaged or destroyed by fire or other casualty, and OWNER receives an award or insurance proceeds for the repair or reconstruction of the same, and OWNER does not use such award or proceeds to repair or reconstruct the Assisted Unit in question.
- g. Bankruptcy, Dissolution and Insolvency. OWNER (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or thirty (30) days after such filing; (2) making general assignment for the benefit of creditors;

1 (3) applying for the appointment of a receiver, trustee, custodian,  
2 or liquidator, or failure to obtain a full dismissal of any such  
3 involuntary application brought by another party before the earlier  
4 of final relief or forty-five (45) days after such filing; (4)  
5 insolvency; or (5) failure, inability or admission in writing of its  
6 inability to pay its debts as they become due.

7 31. NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For  
8 monetary and non-monetary Events of Default, the COUNTY shall give written notice to  
9 OWNER of any Event of Default by specifying: (a) the nature of the Event of Default or the  
10 deficiency giving rise to the default, (b) the action required to cure the deficiency, if an action  
11 to cure is possible, and (c) a date, which shall be at least thirty (30) calendar days from the  
12 mailing of the notice, by which such action to cure must be taken. The COUNTY agrees that  
13 OWNER shall have the right to cure any and all defaults under this Agreement and as provided  
14 in Section 18 in the Deed of Trust attached herein as Exhibit B.

15 32. COUNTY REMEDIES. Upon the happening of an Event of Default and a  
16 failure by OWNER to cure said default within the time specified in the notice of default (if an  
17 action to cure is specified in said notice), the COUNTY's obligation to disburse NSP funds  
18 shall terminate, and the COUNTY may also in addition to other rights and remedies permitted  
19 by this Agreement or applicable law, proceed with any or all of the following remedies in any  
20 order or combination the COUNTY may choose in its sole discretion:

- 21 a. Terminate this Agreement, in which event the entire amount as  
22 well as any other monies advanced to OWNER by the COUNTY  
23 under this Agreement including administrative costs, shall  
24 immediately become due and payable at the option of the  
25 COUNTY.
- 26 b. Bring an action in equitable relief (1) seeking the specific  
27 performance by OWNER of the terms and conditions of this  
28 Agreement, and/or (2) enjoining, abating, or preventing any

1 violation of said terms and conditions, and/or (3) seeking  
2 declaratory relief.

3 c. Accelerate the NSP Loan, and demand immediate full payment of  
4 the principal payment outstanding and all accrued interest under  
5 the Note, as well as any other monies advanced to OWNER by the  
6 COUNTY under this Agreement.

7 d. Pursue any other remedy allowed at law or in equity.

8 33. OWNER'S REMEDIES. Upon the fault or failure of the COUNTY to  
9 meet any of its obligations under this Agreement, OWNER may:

10 a. Demand payment from the COUNTY of any sums due OWNER;  
11 and/or

12 b. Bring an action in equitable relief seeking the specific performance  
13 by the COUNTY of the terms and conditions of this Agreement;  
14 and/or

15 c. Pursue any other remedy allowed at law or in equity.

16 34. OWNER'S WARRANTIES. OWNER represents and warrants (1) that it  
17 has access to professional advice and support to the extent necessary to enable OWNER to  
18 fully comply with the terms of this Agreement, and to otherwise carry out the Project, (2) that  
19 it is duly organized, validly existing and in good standing under the laws of the State of  
20 California, (3) that it has the full power and authority to undertake the Project and to execute  
21 this Agreement, (4) that the persons executing and delivering this Agreement are authorized to  
22 execute and deliver such documents on behalf of OWNER and (5) that neither OWNER nor  
23 any of its principals is presently debarred, suspended, proposed for debarment, declared  
24 ineligible, or voluntarily excluded from participation in connection with the transaction  
25 contemplated by this Agreement.

26 35. OWNER'S CERTIFICATION. OWNER certifies, to the best of its  
27 knowledge and belief, that:

28 a. No federally appropriated funds have been paid or will be paid, by

1 or on behalf of the undersigned, to any person for influencing or  
2 attempting to influence an officer or employee of any agency, a  
3 member of Congress, an officer or employee of Congress, or an  
4 employee of a member of Congress in connection with the  
5 awarding of any federal contract, the making of any federal grant,  
6 the making of any federal loan, the entering into of any cooperative  
7 agreement, and the extension, continuation, review, amendment, or  
8 modification of any federal contract, grant, loan, or cooperative  
9 agreement.

10 b. If any funds other than federally appropriated funds have been paid  
11 or will be paid to any person for influencing or attempting to  
12 influence an officer or employee of any agency, a member of  
13 Congress, an officer or employee of Congress, or an employee of a  
14 member of Congress in connection with this federal contract,  
15 grant, loan, or cooperative agreement, the undersigned shall  
16 complete and submit Standard Form-LLL, "Disclosure Form to  
17 Report Lobbying," in accordance with its instructions.

18 c. The undersigned shall require that the language of this certification  
19 be included in the award documents for all sub-awards at all tiers  
20 (including subcontracts, sub-grants, and contracts under grants,  
21 loans, and cooperative agreements) and that OWNER shall certify  
22 and disclose accordingly. This certification is a material  
23 representation of fact upon which reliance was placed when this  
24 transaction was made or entered into.

25 36. HOLD HARMLESS AND INDEMNIFICATION. OWNER shall  
26 indemnify and hold harmless the COUNTY, its Agencies, Districts, Special Districts and  
27 Departments, their respective directors, officers, Board of Supervisors, elected and appointed  
28 officials, employees, agents and representatives from any liability whatsoever, based or asserted



1 upon any services of OWNER, its officers, employees, subcontractors, agents or representatives  
2 arising out of or in any way relating to this Agreement, including but not limited to property  
3 damage, bodily injury, or death or any other element of any kind or nature whatsoever arising  
4 from the performance of OWNER, its officers, agents, employees, subcontractors, agents or  
5 representatives from this Agreement. OWNER shall defend, at its sole expense, all costs and  
6 fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or  
7 awards, the County of Riverside, its Agencies, Districts, Special Districts and Departments,  
8 their respective directors, officers, Board of Supervisors, elected and appointed officials,  
9 employees, agents and representatives in any claim or action based upon such alleged acts or  
10 omissions.

11 With respect to any action or claim subject to indemnification herein by OWNER,  
12 OWNER shall, at its sole cost, have the right to use counsel of its own choice and shall have the  
13 right to adjust, settle, or compromise any such action or claim without the prior consent of  
14 COUNTY; provided, however, that any such adjustment, settlement or compromise in no  
15 manner whatsoever limits or circumscribes OWNER's indemnification to COUNTY as set forth  
16 herein.

17 OWNER's obligation hereunder shall be satisfied when OWNER has provided to  
18 COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action  
19 or claim involved.

20 The specified insurance limits required in this Agreement shall in no way limit or  
21 circumscribe OWNER's obligations to indemnify and hold harmless the COUNTY herein from  
22 third party claims.

23 In the event there is conflict between this clause and California Civil Code Section 2782,  
24 this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not  
25 relieve OWNER from indemnifying the COUNTY to the fullest extent allowed by law.

26 37. TERMINATION.

- 27 a. OWNER. OWNER may terminate this Agreement consistent with  
28 the Act, the regulations consistent implementing the Act, and 24

1 CFR 85.44.

2 b. COUNTY. Notwithstanding the above provision hereof, COUNTY  
3 may suspend or terminate this Agreement upon written notice to  
4 OWNER of the action being taken and the reason for such action:

5 i. In the event OWNER fails to perform the covenants  
6 herein contained at such times and in such manner as  
7 provided in this Agreement after the applicable notice  
8 and cure provision hereof; or

9 ii. In the event there is a conflict with any federal, state or  
10 local law, ordinance, regulation or rule rendering any of  
11 the provisions of this Agreement invalid or untenable;  
12 or

13 iii. In the event that COUNTY's NSP funding from HUD,  
14 as referred to in **Section 1**, is terminated or otherwise  
15 becomes unavailable.

16 c. This Agreement may be terminated or funding suspended in whole  
17 or in part for cause in accordance with 24 CFR 85.43. Cause shall  
18 be based on the failure of OWNER to materially comply with  
19 either the terms or conditions of this Agreement after the  
20 applicable notice and cure provision hereof. Upon suspension of  
21 funding, OWNER agrees not to incur any costs related thereto, or  
22 connected with, any area of conflict from which the COUNTY has  
23 determined that suspension of funds is necessary. The award may  
24 be terminated for convenience in accordance with 24 CFR 85.44.

25 d. Upon expiration of this Agreement, OWNER shall transfer to the  
26 COUNTY any unexpended NSP funds in its possession at the time  
27 of expiration of the Agreement as well as any accounts receivable  
28 held by OWNER which are attributable to the use of NSP funds

1 awarded pursuant to this Agreement.

2 38. AFFORDABILITY RESTRICTIONS. The COUNTY and OWNER  
3 hereby declare their express intent that the restrictions set forth in this Agreement for the  
4 Property of the Project shall be affordable for the Affordability Period, and shall bind all  
5 successors in title to the Property until the expiration of this Agreement. Each and every  
6 contract, deed or other instrument hereafter executed covering and conveying the Property or  
7 any portion thereof shall be held conclusively to have been executed, delivered and accepted  
8 subject to such restrictions, regardless whether such restrictions are set forth in such contract,  
9 deed or other instrument.

10 39. MECHANICS LIENS AND STOP NOTICES. If any claim of mechanics  
11 lien is filed against the Project or a stop notice affecting the NSP Loan is served on the  
12 COUNTY, OWNER must, within twenty (20) days of such filing or service, either pay and  
13 fully discharge the lien or stop notice, obtain a release of the lien or stop notice by delivering to  
14 the COUNTY a surety bond in sufficient form and amount, or provide the COUNTY with  
15 other assurance reasonably satisfactory to COUNTY that the lien or stop notice will be paid or  
16 discharged.

17 40. ENTIRE AGREEMENT. It is expressly agreed that this Agreement  
18 embodies the entire agreement of the parties in relation to the subject matter hereof, and that no  
19 other agreement or understanding, verbal or otherwise, relative to this subject matter, exists  
20 between the parties at the time of execution.

21 41. AUTHORITY TO EXECUTE. The persons executing this Agreement or  
22 exhibits attached hereto on behalf of the parties to this Agreement hereby warrant and  
23 represent that they have the authority to execute this Agreement and warrant and represent that  
24 they have the authority to bind the respective parties to this Agreement to the performance of  
25 its obligations hereunder.

26 42. WAIVER. Failure by a party to insist upon the strict performance of any  
27 of the provisions of this Agreement by the other party, or the failure by a party to exercise its  
28 rights upon the default of the other party, shall not constitute a waiver of such party's rights to

1 insist and demand strict compliance by the other party with the terms of this Agreement  
2 thereafter.

3 43. INTERPRETATION AND GOVERNING LAW. This Agreement and  
4 any dispute arising hereunder shall be governed by and interpreted in accordance with the laws  
5 of the State of California. This Agreement shall be construed as a whole according to its fair  
6 language and common meaning to achieve the objectives and purposes of the parties hereto,  
7 and the rule of construction to the effect that ambiguities are to be resolved against the drafting  
8 party shall not be employed in interpreting this Agreement, all parties having been represented  
9 by counsel in the negotiation and preparation hereof.

10 44. JURISDICTION AND VENUE. Any action at law or in equity arising  
11 under this Agreement or brought by a party hereto for the purpose of enforcing, construing or  
12 determining the validity of any provision of this Agreement shall be filed in the consolidated  
13 Courts of Riverside County, State of California, and the parties hereto waive all provisions of  
14 law providing for the filing, removal or change of venue to any other court or jurisdiction.

15 45. SEVERABILITY. Each paragraph and provision of this Agreement is  
16 severable from each other provision, and if any provision or part thereof is declared invalid, the  
17 remaining provisions shall nevertheless remain in full force and effect.

18 46. MINISTERIAL ACTS. The COUNTY's Assistant County Executive  
19 Officer/EDA or designee(s) are authorized to take such ministerial actions as may be necessary  
20 or appropriate to implement the terms, provisions, and conditions of this Agreement as it may  
21 be amended from time to time by both parties.

22 47. MODIFICATION OF AGREEMENT. The COUNTY or OWNER may  
23 consider it in its best interest to change, modify or extend a term or condition of this  
24 Agreement. Any such change, extension or modification, which is mutually agreed upon by the  
25 COUNTY and OWNER shall be incorporated in written amendments to this Agreement. Such  
26 amendments shall not invalidate this Agreement, nor relieve or release the COUNTY or  
27 OWNER from any obligations under this Agreement, except for those parts thereby amended.  
28 No amendment to this Agreement shall be effective and binding upon the parties, unless it

1 expressly makes reference to this Agreement, is in writing and is signed and acknowledged by  
2 duly authorized representatives of all parties.

3 48. ASSIGNMENT. The OWNER will not make any sale, assignment,  
4 conveyance, or lease of any trust or power, or transfer in any other form with respect to this  
5 Agreement or the Project, without prior written approval of the COUNTY, which approval  
6 shall not be unreasonably withheld. Any proposed transferee shall have the qualifications and  
7 financial responsibility, as reasonably determined by the COUNTY necessary and adequate to  
8 fulfill the obligations undertaken in this Agreement by the OWNER. Any proposed transferee  
9 shall, by instrument in writing, for itself and its successor and assigns, and expressly for the  
10 benefit of the COUNTY, assume all of the obligations of the OWNER under this Agreement  
11 and agree to be subject to all the conditions and restrictions to which the OWNER is subject.

12 49. EXHIBITS AND ATTACHMENTS. Each of the attachments and  
13 exhibits attached hereto is incorporated herein by this reference.

14 50. NOTICES. All notices, requests, demands and other communication  
15 required or desired to be served by either party upon the other shall be addressed to the  
16 respective parties as set forth below or the such other addresses as from time to time shall be  
17 designated by the respective parties and shall be sufficient if sent by U.S. first class, certified  
18 mail, postage prepaid, or express delivery service with a receipt showing the date of delivery.

19	<u>COUNTY</u>	<u>OWNER</u>
20	Director of Housing Development	President
21	Riverside County	Hitzke Development Corporation
22	Economic Development Agency	251 Autumn Drive
	1325 Spruce Street, Suite 400	Suite 100
	Riverside, CA 92507	San Marcos, CA 92069

23 With a copy to:  
24 Boston Capital Corporate Tax Credit Fund  
25 XXXIII, A Limited Partnership  
26 c/o Boston Capital Partners, Inc.  
27 One Boston Place  
28 Boston, Massachusetts 02108

51. MEDIA RELEASES. OWNER agrees to allow COUNTY to coordinate

1 all media releases regarding the Project, with prior approval of OWNER. Any publicity  
2 generated by OWNER for the Project must make reference to the contribution of COUNTY in  
3 making the Project possible. COUNTY's name shall be prominently displayed in all pieces of  
4 publicity generated by OWNER, including flyers, press releases, posters, signs, brochures, and  
5 public service announcements. OWNER agrees to cooperate with COUNTY in any COUNTY-  
6 generated publicity or promotional activities with respect to the Project.

7           52.    COUNTERPARTS. This Agreement may be signed by the different  
8 parties hereto in counterparts, each of which shall be an original but all of which together shall  
9 constitute one and the same agreement.

10           53.    EFFECTIVE DATE. The effective date of this Agreement is the date the  
11 parties execute the Agreement. If the parties execute the Agreement on more than one date,  
12 then the last date the Agreement is executed by a party shall be the effective date.

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26

27

28

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

3  
4 COUNTY:  
5 COUNTY OF RIVERSIDE

OWNER:  
BIASA II, LP, a California limited partnership

6 By: \_\_\_\_\_  
7 MARION ASHLEY  
8 Chairman, Board of Supervisors

By: Hitzke Development Corporation,  
a California corporation  
Its: General Partner

9 By:   
10 Name: GINGER HITZKE  
11 Its: President

12 APPROVED AS TO FORM:

13 PAMELA J. WALLS  
14 County Counsel

15  
16 By: \_\_\_\_\_  
17 Deputy

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

22 By: \_\_\_\_\_  
23 Deputy

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

STATE OF CALIFORNIA }

COUNTY OF San Diego }

On 05/17/10, before me, Helen Y. Subka, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Ginger Hitzke  
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 Helen Y. Subka  
Signature of Notary Public





STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

} §

On May 25, 2010, before me, Karen Barton, Board Assistant, personally appeared Marion Ashley, Chairman of the Board of Supervisors, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument; and that a copy of this paper, document or instrument has been delivered to the chairperson.

I certify under the 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

Kecia Harper-Ihem  
Clerk of the Board of Supervisors

By: \_\_\_\_\_

  
Deputy Clerk

(SEAL)

# Exhibit A

**OWNER:** BIASA II, LP  
**Address:** 43460 Ridge Park Drive, Temecula, CA 92590  
**Project Title:** NSP-4 Hacienda Hills, Desert Hot Springs

**Project Description:**

OWNER is requesting \$4,677,316 in NSP funds for acquisition and rehabilitation of a partially completed 60-unit townhouse complex and rent to very low and low-income households within the city of Desert Hot Springs. Thirty (30) units shall be limited to households whose incomes do not exceed fifty percent (50%) of Riverside County median family income. Twenty nine (29) units shall be limited to households whose incomes do not exceed sixty percent (60%) of Riverside County median family income (“Assisted Unit” or Assisted Unit”). The Project consists of all two-bedroom units. One two-bedroom unit will be set aside for an on-site manager. The Project site is approximately 4.43 acres with Assessor Parcel number 642-081-006 and located along Hacienda Drive between Verbena Drive and Tamar Drive in the City of Desert Hot Springs.

OWNER will utilize NSP funds for acquisition and rehabilitation costs for the Project. The period of affordability for the Property (the “Affordability Period”) shall be fifty-five (55) years from the issuance of the Certificate of Occupancy.

**Target Areas:**

Project must reside inside an area of greatest need within the designated Target Area of the County of Riverside as defined in the County’s 2008-2009 One Year Action Plan. Not all areas inside the city boundary are Target Areas. The Property for this Project must lie within the Target Areas of the city of Desert Hot Springs.

LEGAL DESCRIPTION OF PROPERTY

At

67150 HACIENDA DRIVE,  
DESERT HOT SPRINGS, CA 92240

PARCEL:

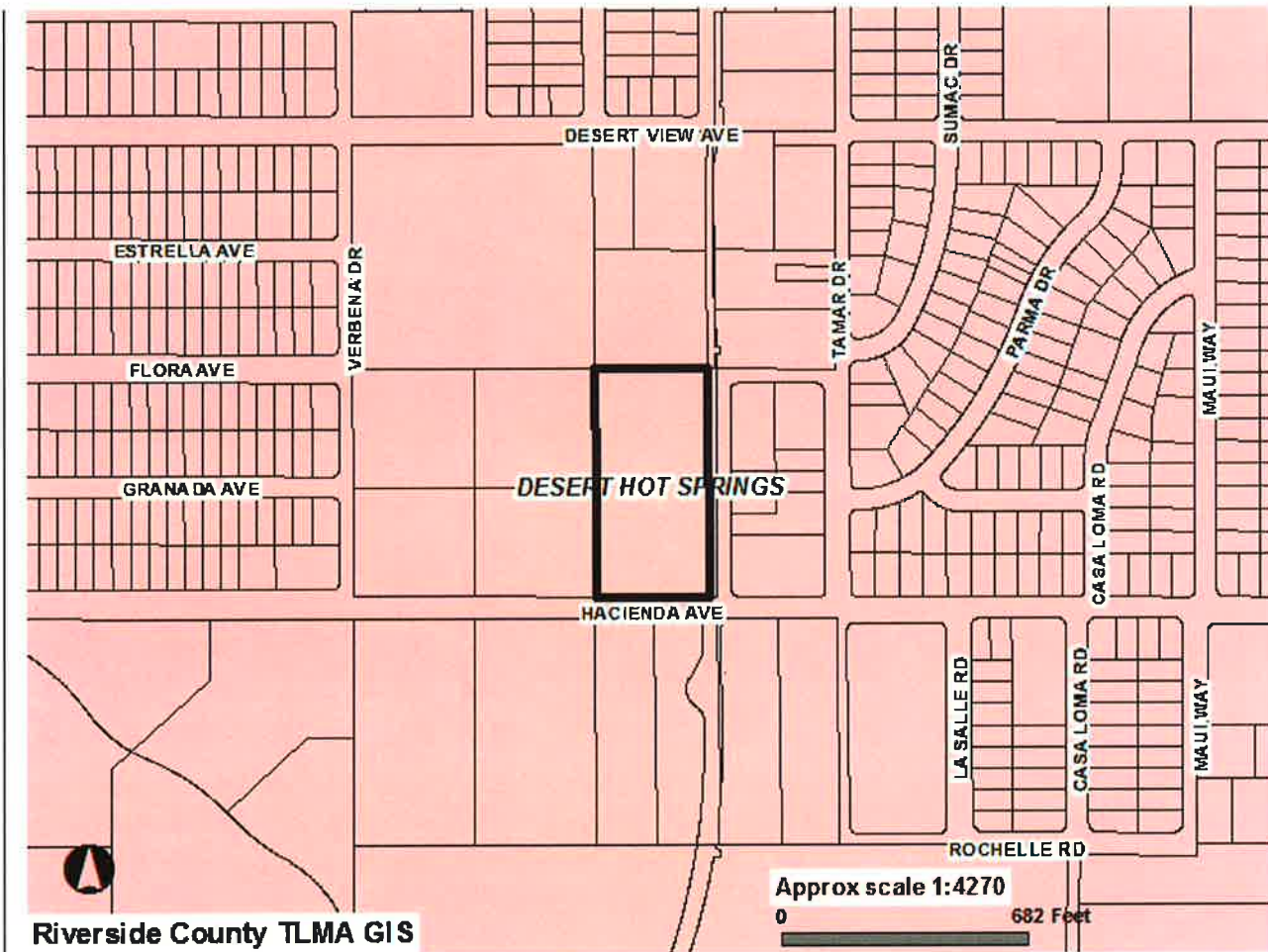
REAL PROPERTY IN THE CITY OF DESERT HOT SPRINGS, COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER  
OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 2, SOUTH, RANGE 5  
EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL  
PLAT THEREOF.

EXCEPTING THEREFROM THE SOUTH 30 FEET AS GRANTED TO THE COUNTY OF  
RIVERSIDE BY DEED RECORDED JANUARY 15, 1952 IN BOOK 1334, PAGE 217 OF  
OFFICIAL RECORDS OF RIVERSIDE COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION GRANTED TO THE RIVERSIDE  
COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, RECORDED  
APRIL 18, 1991 AS INSTRUMENT NO. 191-127716, OF OFFICIAL RECORDS OF  
RIVERSIDE COUNTY.

ASSESSOR'S PARCEL NUMBER: 642-081-006-9



## Project Sources and Uses of Fund:

### Sources:

Redevelopment Agency of the	\$ 750,000
City of Desert Hot Springs	\$ 986,599
Permanent Loan	\$ 2,050,000
Limited Partner Tax Credit Equity	\$ 1,320,342
Solar Rebates	\$ 6,250
Deferred Developer Fee	\$ 201,413
County of Riverside NSP Loan	<u>\$ 4,677,316</u>
<b>Total Sources</b>	<b>\$ 9,241,920</b>

### Uses:

Land & Acquisition Costs	\$ 3,805,000
Architectural & Engineering Cost	\$ 317,500
Construction	\$ 2,121,750
Contractor's Overhead & Profit	\$ 275,385
Developer's Overhead & Profit	\$ 713,055
Construction contingency	\$ 160,912
Legal, Financial & Other	\$ 370,000
Permits & Fees	\$ 400,000
Financing Costs	\$ 822,319
Reserve	\$ 216,000
Marketing / General Administration	<u>\$ 40,000</u>
<b>Total Uses</b>	<b>\$ 9,241,920</b>

The OWNER will obtain a reservation of Federal/State tax credit award from the California Tax Credit Allocation Committee.

## IMPLEMENTATION SCHEDULE

Milestone	Completion Date
1. NSP Loan Agreement executed	June 3, 2010
2. DHS RDA funding commitment	October 6, 2010
3. TCAC reservation award	March 17, 2010
4. Acquisition of Assisted Units completed*	October 3, 2010 (4 <sup>th</sup> month)
5. Rehabilitation Plan and revised budget	October 3, 2010
6. Marketing Plan Status and Outreach	November 1, 2010
7. Rehabilitation of Assisted Units completed*	March 30, 2011 (9 <sup>th</sup> month)
8. Submission of Closing Documents	September 30, 2011

\* Section 27 – Performance Requirements

## DOCUMENT SUBMISSION SCHEDULE

Documents	Due Date
1. NSP Activities Reporting and Project Photos	Monthly, due by the 15 <sup>th</sup> of each month
2. Liability and Certificate of Workers' Compensation Insurance for OWNER and General Contractor	OWNER – At the close of property acquisition. GC – Before start of construction. Copies of Certificates must be filed and up-to-date throughout the course of the Project with the COUNTY additionally insured.
3. Minority & Women Business Enterprise Report – HUD form 2516, and Section 3 Reporting	Semi-Annually– <b>Sept 30th &amp; March 31<sup>st</sup></b> Completion of Project
4. Notice of Completion	End of Construction
5. Certificate of Occupancy	End of Construction
6. Conditional/Unconditional Release for Final from GC, and if applicable, Sub-contractors	Close of Rehabilitation
7. Rehabilitation Completion Report	Close of Rehabilitation
8. Final Development Cost - Sources and Uses	Close of Rehabilitation
9. Tenant Selection Policy	Marketing Stage
10. Flyers, Community Contacts, Outreach, Press Releases, Grand Opening info	Marketing Stage

# **EXHIBIT B**

Deed of Trust



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

Riverside County  
Economic Development Agency  
3403 10<sup>th</sup> Street, Suite 500  
Riverside, CA 92501  
ATTN: Mervyn Manalo

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### DEED OF TRUST WITH ASSIGNMENT OF RENTS

This DEED OF TRUST is made on this 25<sup>TH</sup> day of MAY, <sup>2010</sup>2009.  
The grantor is BIASA II, LP, a California limited partnership ("Borrower" or "OWNER"), and whose address is 43460 Ridge Park Drive, Temecula, CA 92590. The trustee is RIVERSIDE COUNTY ECONOMIC DEVELOPMENT AGENCY ("Trustee"). The lender is the COUNTY OF RIVERSIDE ("COUNTY" or "Lender"), a public agency, organized and existing under the laws of the State of California, and whose address is 3403 10<sup>th</sup> Street, Suite 500, Riverside, CA 92501.

Pursuant to the terms of the NSP Loan Agreement, dated MAY 25, 2010 (the "Agreement"), Borrower owes Lender the sum of Four Million Six Hundred Seventy Seven Thousand Three Hundred Sixteen Dollars (U.S. \$4,677,316) (the "NSP Loan") for acquisition and rehabilitation of the property as legally described in Exhibit B-1 (the "Property") which is attached hereto and by this reference incorporated herein, and rental of Assisted Units. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement. This debt is evidenced by Borrower's Note dated MAY 25, 2010 ("Note").

#### **The Note shall provide the following:**

*The NSP Loan will accrue interest at a rate of zero percent (0%) per annum, except in the case of default as provided in the Agreement, and shall be repaid on an annual basis from the Project's Residual Receipts as defined herein;*

*Residual Receipts shall be determined based on a review of certified financial statements for the Project. Project Residual Receipts are defined as gross receipts, not including interest on required reserve accounts, less the following:*

- i) auditing and accounting fees;*
- ii) operating expenses;*
- iii) a property management fee not to exceed \$40 per unit per month, increased annually by an amount equal to the increase in the Consumer Price Index (CPI);*
- iv) an Investor Annual Review Fee not to exceed \$5,000;*
- v) reserves;*
- vi) replacement reserves limited to \$250 per Assisted Unit annually;*
- vii) deferred developer's fee;*

- viii) *partnership management fees provided under OWNER'S partnership agreement not to exceed \$25,000 per year; and*
- ix) *payments of principal and interest on amortized loans and indebtedness which have been approved by the COUNTY.*

*The Note shall be repaid according to the following:*

- i) *Seventy percent (70%) of the Project's Residual Receipts shall be paid towards the payment of the Agency Loan;*
- ii) *Twenty-five percent (25%) of the Project's Residual Receipts shall be paid to the OWNER; and*
- iii) *The remaining five percent (5%) of the Project's Residual Receipts shall be paid towards the payment of the NSP Loan.*

The NSP Loan is evidenced by the Note and secured by this Deed of Trust ("Security Instrument"). The Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest as provided in the Note, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest as provided in the Note, advanced under paragraph 8 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, all of Borrower's right, title and interest in and to the Assisted Unit located in Riverside County, California, which is further described as:

LEGAL DESCRIPTION: See **Exhibit B-1**.

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that the Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey its fee and leasehold interest in the Property, as applicable, and the Property is unencumbered. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to such encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows:

1. **Payment of Principal; Late Charges.** Borrower shall promptly pay when due the principal of on the debt evidenced by the Note and any late charges due under the Note.
2. **Taxes and Insurance.** Borrower shall pay at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant

water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

- a. Should Borrower fail to make any payment or to do any act herein provided, then Lender or Trustee, but without obligation so to do and upon written notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Lender or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

**3 Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to amounts payable under paragraph 2; second, to interest due; third, to principal due; and last, to any late charges due under the Note.

**4 Prior Deeds of Trust; Charge; Liens.** The Borrower shall perform all of the Borrower's obligations under this Deed of Trust, including Borrower's covenants to make payments when due, subject to applicable cure periods. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any, subject to applicable cure periods. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

- a) Except for the liens permitted by the Lender, Borrower shall promptly discharge any other lien which shall have attained priority over this Security Instrument unless Borrower: (1) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (2) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; (3) bond around the lien; or (4) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy such lien or take one or more of the actions set forth above within thirty (30) days of the giving of notice.

- 5. Subordination.** This Deed of Trust shall be recorded in second position. The Lender hereby agrees to execute any and all documents necessary to effectuate subordination concerning this loan, to construction and permanent loans, and any future refinancing upon Borrower's request. Borrower shall request Lender approval of any additional subordination and Lender consent shall not be unreasonably withheld.
- 6. Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss of fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods as required in the Loan Agreement. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 8.
- a) All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. All requirements hereof pertaining to insurance shall be deemed satisfied if the Borrower complies with the insurance requirements under the Senior Deeds of Trust. All original policies of insurance required pursuant to the Senior Deeds of Trust shall be held by the Senior Lien Holders; provided, however, Lender may be named as a loss payee as its interest may appear and may be named as an additional insured. Borrower shall promptly give to Lender certificates of insurance showing the coverage is in full force and effect and that Lender is named as additional insured. In the event of loss, Borrower shall give prompt notice to the insurance carrier, the Senior Lien Holders and Lender. Lender may make proof of loss if not made promptly by the Senior Lien Holders or the Borrower.
  - b) Unless Lender and Borrower otherwise agree in writing, and subject to the terms of the Senior Deeds of Trust, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided Borrower determines that such restoration or repair is economically feasible and there is no default continuing beyond the expiration of all applicable cure periods. If Borrower determines that such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

- c) Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of Note. If under paragraph 23 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.
- d) Notwithstanding the above, the Lender's rights to collect and apply the insurance proceeds hereunder shall be subject and subordinate to the rights of the Senior Lien Holders to collect and apply such proceeds in accordance with the Senior Deeds Trust.

**7. Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to representations concerning Borrowers use of Property for affordable housing. If this Security Instrument is on a leasehold, Borrower shall comply with all provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

- a) The Borrower acknowledges that this Property is subject to certain use and occupancy restrictions (which may be further evidenced by a separate agreement recorded in the land records where the Property is located), limiting the Property's use to very low-income housing for households earning no more than fifty percent (50%) of the median income within Riverside County. The use and occupancy restrictions may limit the Borrower's ability to sell the Property. The violation of any use and occupancy restrictions may, if not prohibited by federal law, entitle the Lender to the remedies provided in Section 23 hereof.

**8. Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then, subject to any applicable grace periods or cure periods, Lender may do

and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument (including sums secured by the Senior Deeds of Trust), appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 8, Lender does not have to do so.

- a. Any amounts disbursed by Lender under this paragraph 8 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.
- b. Prior to taking any actions under this Section 8, however, Lender shall notify the Senior Lien Holder of such default in the manner provided in Section 23 of this Security Instrument, and shall provide the Senior Lien Holder with the opportunity to cure any such default under this Security Instrument. All amounts advanced by a Senior Lien Holder to cure a default hereunder shall be deemed advanced by such Senior Lien Holder and shall be secured by the applicable Senior Deed of Trust. In addition, the Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lien Holders at least 60 days' prior written notice. Any action by Lender hereunder to foreclose or accept a deed in lieu of foreclosure shall be subject to the "due on sale" provisions of the Senior Deeds of Trust.
- c. Lender and Borrower further agree that a default hereunder shall constitute a default under the Senior Deed of Trust. In the event of a default hereunder, the Senior Lien Holder shall have the right to exercise all rights and remedies under the Senior Deed of Trust.

**9. Mortgage Insurance.** (Not used)

**10. Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

**11. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of the Senior Deeds of Trust.

- a. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in

which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due. Notwithstanding the foregoing, so long as the value of Lender's lien is not impaired, any condemnation proceeds may be used by Borrower for repair and/or restoration of the project.

- b. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemner offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.
- c. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Except in connection with any successor in interest approved by lender, extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Successors and Assigns Bound; Joint and Several Liability.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 18. Borrower's covenants and agreements shall be joint and several.

- 14. Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be promptly refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.
- 15. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Borrower's mailing address stated herein or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice required to be given to a Senior Lien Holder shall be given by first class mail to any Senior Lien Holder at such address Senior Lien Holder designates by notice to the Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.
- 16. Governing Law; Severability.** This Security Instrument shall be governed by state law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.
- 17. Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.
- 18. Transfer of the Property or a Beneficial Interest in Borrower.** Except for a conveyance to the trustee(s) under the Senior Deeds of Trust and the sale of units in the Project, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent (including a transfer of all or any part of the Property to any person who, at initial occupancy of the Property, does not use the Property for "low income housing" within the meaning of the U.S. Department of Housing and Urban Development) Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Nothing in this Security Instrument shall be deemed to require Lender's approval of a transfer of limited partnership interests in the Borrower.
- a. If Lender exercises the foregoing option, Lender shall give Borrower and the Senior Lien Holder prior written notice of acceleration. The notice shall



provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

- b. Notwithstanding Lender's right to invoke any remedies hereunder, as provided in Section 8 above, Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lien Holders at least 60 days' prior written notice. The Borrower's limited partners shall have the same right to cure as Senior Lien Holders.
- c. The Borrower and the Lender agree that whenever the Note or this Security Instrument gives the Lender the right to approve or consent with respect to any matter affecting the Property (or the construction of any improvements thereon) or otherwise (including the exercise of any "due on sale" clause), and a right of approval or consent with regard to the same matter is also granted to the Senior Lien Holders pursuant to the Senior Deeds of Trust, the Senior Lien Holders' approval or consent or failure to approve or consent, as the case may be, shall be binding on the Borrower and the Lender.

**19. Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 18.

**20. Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 15 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which

payments should be made. The notice will also contain any other information required by applicable law.

**21. No Assignment.** Until the loans secured by the Senior Deeds of Trust have been satisfied in full, the Lender and the Borrower agree that the Note and the Security Instrument will not be assigned without the Senior Lien Holders' prior written consent.

**22. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses, construction, and to maintenance of the Property.

a. Borrower shall promptly given Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified in writing by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Prior to taking any such remedial action, however, the Borrower shall notify the Senior Lien Holders that such remedial action is necessary and shall obtain the Senior Lien Holders' prior written consent for such remedial action.

b. As used in this paragraph 22, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 22, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**23. Acceleration; Remedies.** Lender shall give notice to Borrower, Borrower's investment limited partner (the "Investment Limited Partner") and the Senior Lien Holders prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower and the Investment Limited Partner (and with respect to a Senior Lien Holder, 60 days from the date the notice is given to such Senior Lien Holder), by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice

may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured by the Borrower on or before the date specified in the notice, and the Senior Lien Holders or the Investment Limited Partner have not exercised their right to cure the default, then Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Notwithstanding Lender's right to invoke any remedies hereunder, as provided in Section 8 above, the Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lien Holders, the Special Limited Partner and the Investment Limited Partner at least 60 days' prior written notice. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 23, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

- a. If Lender invokes the power of sale, Lender or Trustee shall mail copies of a notice of sale in the manner prescribed by applicable law to Borrower, the Investment Limited Partner, the Senior Lien Holders and to the other persons prescribed by applicable law. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property to any later time on the same date by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.
- b. Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

**24. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

**25. Substitute Trustee.** Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the

Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

**26. Modification of Senior Deeds of Trust Loan Documents.** The Lender consents to any agreement or arrangement in which a Senior Lien Holder waives, postpones, extends, reduces or modifies any provisions of the applicable Senior Deed of Trust loan documents, including any provisions requiring the payment of money.

**27. Not Used.**

**28. General Partner Change.** The withdrawal, removal, and/or replacement of a general partner of the Borrower pursuant to the terms of the Partnership Agreement of Borrower (as the same may be amended from time to time) shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan, provided that any required substitute general partner is reasonably acceptable to Lender and is selected with reasonable promptness. Any proposed General Partner replacement shall have the qualifications and financial responsibility as reasonably determined by the Lender necessary and adequate to fulfill the obligations undertaken in the NSP Loan, as amended. Notwithstanding the foregoing, an affiliate of the limited partner or special limited partner shall be deemed an acceptable substitute general partner.

(SIGNATURES ON NEXT PAGE)

**BY SIGNING BELOW, the Borrower and the Lender accept and agree to the terms and covenants contained in this Deed of Trust.**

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

**BORROWER:**

BIASA II, LP,  
a California limited partnership

By: Hitzke Development Corporation,  
a California corporation  
Its: General Partner

By: \_\_\_\_\_  
Name: GINGER HITZKE  
Its: President



(SIGNATURES CONTINUE ON NEXT PAGE)

**ALL SIGNATURES MUST BE NOTARIZED**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

STATE OF CALIFORNIA }

COUNTY OF San Diego }

On 05/17/10, before me, Helen Y. Subka, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Ginger Hitzke  
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 Helen Y. Subka  
Signature of Notary Public

LENDER:

COUNTY OF RIVERSIDE

By:   
MARION ASHLEY  
Chairman, Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS  
County Counsel

By:  5/12/10  
Deputy Michelle Clack

ATTEST:  
KECIA HARPER-IHEM  
Clerk of the Board

By:   
Deputy

**ALL SIGNATURES MUST BE NOTARIZED**

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

} §

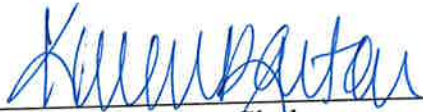
On May 25, 2010, before me, Karen Barton, Board Assistant, personally appeared Marion Ashley, Chairman of the Board of Supervisors, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument; and that a copy of this paper, document or instrument has been delivered to the chairperson.

I certify under the 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

Kecia Harper-Ihem  
Clerk of the Board of Supervisors

By:

  
Deputy Clerk

(SEAL)



REQUEST FOR RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the Note or Notes secured by this Security Instrument (Deed of Trust). Said Promissory Note or Notes, together with all other indebtedness secured by this Security Instrument (Deed of Trust), have been paid in full. You are hereby directed to cancel said Promissory Note or Notes and this Security Instrument (Deed of Trust), which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated: \_\_\_\_\_

# **EXHIBIT B-1**

## **Property Legal Description**

LEGAL DESCRIPTION OF PROPERTY

At

67150 HACIENDA DRIVE,  
DESERT HOT SPRINGS, CA. 92240

PARCEL:

REAL PROPERTY IN THE CITY OF DESERT HOT SPRINGS, COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER  
OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 2, SOUTH, RANGE 5  
EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL  
PLAT THEREOF.

EXCEPTING THEREFROM THE SOUTH 30 FEET AS GRANTED TO THE COUNTY OF  
RIVERSIDE BY DEED RECORDED JANUARY 15, 1952 IN BOOK 1334, PAGE 217 OF  
OFFICIAL RECORDS OF RIVERSIDE COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION GRANTED TO THE RIVERSIDE  
COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, RECORDED  
APRIL 18, 1991 AS INSTRUMENT NO. 191-127716, OF OFFICIAL RECORDS OF  
RIVERSIDE COUNTY.

ASSESSOR'S PARCEL NUMBER: 642-081-006-9

# **EXHIBIT C**

**“Note”**

**PROMISSORY NOTE**

**\$4,677,316**

**Riverside, CA**

In installments as hereafter stated, for value received, BIASA II, LP, a California limited partnership (“Borrower” or “OWNER”) promises to pay the COUNTY OF RIVERSIDE, a political subdivision of the State of California (“COUNTY”), or order, at 3403 10<sup>th</sup> Street, Suite 500, Riverside, CA 92501, the sum of **Four Million Six Hundred Seventy Seven Thousand Three Hundred Sixteen Dollars (U.S. \$4,677,316)** (the “NSP Loan”), at the rate of zero percent (0%) per annum, pursuant to the terms of the NSP Loan Agreement, dated MAY 25, 2010 (the “Agreement”), for acquisition and rehabilitation of the Property and rental of Assisted Units. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

**This Promissory Note shall provide the following:**

*The NSP Loan will accrue interest at a rate of zero percent (0%) per annum, except in the case of default as provided in the Agreement, and shall be repaid on an annual basis from the Project’s Residual Receipts as defined herein;*

*Residual Receipts shall be determined based on a review of certified financial statements for the Project. Project Residual Receipts are defined as gross receipts, not including interest on required reserve accounts, less the following:*

- i) auditing and accounting fees;*
- ii) operating expenses;*
- iii) a property management fee not to exceed \$40 per unit per month, increased annually by an amount equal to the increase in the Consumer Price Index (CPI);*
- iv) an Investor Annual Review Fee not to exceed \$5,000;*
- v) reserves;*
- vi) replacement reserves limited to \$250 per Assisted Unit annually;*
- vii) deferred developer’s fee;*
- viii) partnership management fees provided under OWNER’S partnership agreement not to exceed \$25,000 per year; and*
- ix) payments of principal and interest on amortized loans and indebtedness which have been approved by the COUNTY.*

*The Note shall be repaid according to the following:*

- i) Seventy percent (70%) of the Project’s Residual Receipts shall be paid towards the payment of the Agency Loan;*
- ii) Twenty-five percent (25%) of the Project’s Residual Receipts shall be paid to the OWNER; and*
- iii) The remaining five percent (5%) of the Project’s Residual Receipts shall be paid towards the payment of the NSP Loan.*

Pursuant to the Agreement, the Agreement shall become effective upon execution the Effective Date and the maturity of the NSP Loan with respect to the Property shall be the first to occur of (i) July 1, 2067 or (ii) fifty-five (55) years from the issuance of the Certificate of Occupancy.

In any action commenced to enforce the obligation of the Borrower to pay principal and interest under the Note, the obligations hereunder shall be non-recourse to the Borrower and the

judgment shall not be enforceable personally against the Borrower, Borrower's partners, or the Borrower's assets, and the recourse of the County for the collection of such amounts shall be limited to actions against the Property described in the Deed of Trust executed by the Borrower to secure the Note and the rents, profits, issues, products, and income from the Property.

Should default be made in payment of principal when due and such default shall continue beyond the applicable notice and cure period provided in the Deed of Trust, the outstanding principal balance of this Note shall become immediately due at the option of the holder of this Note. Principal is payable in lawful money of the United States. If action be instituted on this Note, the undersigned promises to pay such sums as the Court may fix as attorney's fees.

The Borrower and its partners, officers, directors, employees, and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Property Loan or the performance of the Borrower's obligations under the NSP documents. The sole recourse of the COUNTY with respect to payment of the principal of, or interest on, the Property Loan, shall be to the Project. No money judgment (or execution on a money judgment) entered in any action (whether legal or equitable) on the NSP documents shall be enforced personally against the Borrower or its partners, officers, directors, employees, and agents, but shall be enforced only against the Project and such other property as may from time to time be hypothecated in connection with the Borrower's obligations under the NSP documents. This non-recourse provision does not limit or impair the enforcement against all such security for the Property Loan of all the rights and remedies of the COUNTY, nor does it impair the right of the COUNTY to assert the unpaid principal amount of the Property Loan as a demand for money within the meaning of California Code of Civil Procedure Section 431.70 or any successor provision. In addition, this non-recourse provision does not relieve the Borrower of personal liability for damage to or loss suffered by the COUNTY as a result of any of the following (i) fraud or willful misrepresentation; (ii) any misappropriation of rental proceeds resulting in the failure to pay taxes, assessments, or other charges that could create statutory liens on the Project and that are payable or applicable prior to any foreclosure under the Deed of Trust; (iii) the fair market value of any personal property of fixtures removed or disposed of by the Borrower other than in accordance with the Deed of Trust; (iv) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss, or destruction to any portion of the Project (to the extent of the misapplied proceeds or awards); and (v) any rental income or other income arising with respect to the Project received by the Borrower after the COUNTY has properly exercised its rights under the Deed of Trust to receive such income upon an Event of Default (as defined under the Deed of Trust).

(SIGNATURE ON NEXT PAGE)

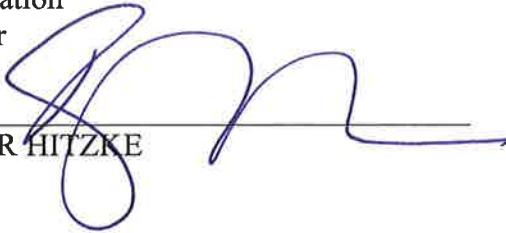
DATE: MAY 25, 2010

BORROWER:

BIASA II, LP,  
a California limited partnership

By: Hitzke Development Corporation,  
a California corporation  
Its: General Partner

By: \_\_\_\_\_  
Name: GINGER HITZKE  
Its: President



# **EXHIBIT D**

**[Intentionally Omitted]**



**EXHIBIT E**

**RIVERSIDE COUNTY**

**ECONOMIC DEVELOPMENT AGENCY**

**SECTION 3**

**24 CFR PART 135**

**ECONOMIC OPPORTUNITIES FOR**

**LOW-AND VERY LOW-INCOME PERSONS**

**CONTRACT REQUIREMENTS**

## RIVERSIDE COUNTY ECONOMIC DEVELOPMENT AGENCY

### I. Section 135.1 Purpose

The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low-and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

### Section 135.30 Numerical Goals for Meeting the Greatest Extent Feasible Requirement

#### A. GENERAL

- (1) Recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in this Section for providing training, employment, and contracting opportunities to Section 3 residents and Section 3 Business Concerns.
- (2) The goals established in this section apply to the entire amount of the Section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY) commencing with the first FY following the effective date of this rule - (October 1, 1994).
- (3) For Recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to Section 3 residents and Section 3 Business Concerns.
- (4) The numerical goals established in this Section represent minimum numerical goals.

#### B. TRAINING AND EMPLOYMENT

The numerical goals set forth in this Section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ Section 3 residents, to the greatest extent feasible, should be made at all levels.

Recipients of section 3 covered community development assistance, and their contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

- (i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995 (October 1, 1994 to September 30, 1995),
- (ii) 20 percent of the aggregate number of the new hires for the one year period beginning in FY 1996 (October 1, 1995 to September 1996); and

- (iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter (October 1, 1996 and thereafter).

C. CONTRACTS

Numerical goals set forth in this Section apply to contracts awarded in connection with all Section 3 covered project and Section 3 covered activities. Each recipient and contractor and subcontractor may demonstrate compliance with the requirements of this part by committing to award to Section 3 Business Concerns:

- (1) At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
- (2) At least three (3) percent of the total dollar amount of all other Section 3 covered contracts.

D. SAFE HARBOR AND COMPLIANCE DETERMINATIONS

- (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the Section 3 preference requirements.
- (2) In evaluating compliance, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in Sec. 135.40, which were provided in its efforts to comply with Section 3 and the requirement of this part.

**III. SECTION 135.34 Preference for Section 3 Residents in Training and Employment Opportunities.**

- A. Order of providing preference. Recipients, contractors, and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in this section.
  - (1) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:
    - (i) Section 3 residents residing in the Riverside or San Bernardino County (collectively, referred to as category 1 residents); and
    - (ii) Participants in HUD Youth build programs (category 2 residents).
    - (iii) Where the section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the Riverside or San Bernardino County shall be given the highest priority;
- B. Eligibility for Preference: A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the

recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Sec. 135.5 (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

- C. Eligibility for employment: Nothing in this part shall be construed to require the employment of a Section 3 resident who does not meet the qualifications of the position to be filled.

**IV SECTION 135.36 Preference for Section 3 Business Concerns in Contracting Opportunities.**

- A. Order of Providing Preference: Recipients, contractors and subcontractors shall direct their efforts to award Section 3 covered contract, to the greatest extent feasible, to Section 3 Business Concerns in the order of priority provided in this section.
  - (1) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:
    - (i) Section 3 business concerns that provide economic opportunities for section 3 residents in the Riverside or San Bernardino County (category 1 businesses); and
    - (ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD YouthBuild Programs (category 2 businesses);
    - (iii) Other section 3 business concerns.
- B. Eligibility for Preference: A Business Concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence, if requested, that the Business Concern is a Section 3 Business Concern as defined in Section 135.5.
- C. Ability to Complete Contract: A Section 3 Business Concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36 (b) (8)). This regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

**SECTION 135.38 Section 3 Clause.**

All section 3 covered contracts shall include the following clause (referred to as the Section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance of HUD-assisted projects covered by Section 3, shall,

to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate actions, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 35 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

**VI. SECTION 135.40 Providing Other Economic Opportunities**

- A. General. In accordance with the findings of the Congress, as stated in Section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with Section 3 covered assistance.

- B. Other training and employment related opportunities. Other economic opportunities to train and employ Section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring Section 3 residents in management and maintenance positions within other housing developments; and hiring Section 3 residents in part-time positions.
- C. Other business related economic opportunities:
  - (1) A recipient or contractor may provide economic opportunities to establish stabilize or expand Section 3 Business Concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of Section 3 Joint Ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from Public Housing Agency resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-Section 3 businesses to utilize such methods to provide other economics opportunities to low-income persons.
  - (2) A Section 3 Joint Venture means an association of Business Concerns, one of which qualifies as a Section 3 Business Concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the Business Concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 Business Concern:
    - (i) Is responsible for clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
    - (ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

**VII. SECTION 135.5 Definitions.**

As used in this part:

**Applicant** means any entity which makes an application for Section 3 covered assistance and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, owner, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

**Assistant Secretary** means the Assistant Secretary for Fair Housing and Equal Opportunity.

**Business Concern** means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

**Contract.** See the definition of "Section 3 covered contract" in this section.

**Contractor** means any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a section 3 covered project.

**Department or HUD** means the Department of Housing and Urban Development, including its Field Offices to which authority has been delegated to perform functions under this part.

**Employment opportunities generated by Section 3 covered assistance** means (with respect to Section 3 covered housing and community development assistance), this term means all employment opportunities arising in connection with Section 3 covered projects (as described in Section 135.3(a) (2)), including management and administrative jobs connected with the Section 3 covered project. Management and administrative jobs, include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

**Housing and community development assistance** means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

**Housing development** means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

**HUD Youth build Programs** means programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low and very low-income families.

**Low income person.** See the definition of "Section 3 Resident" in this section.

**New hires** mean full-time employees for permanent, temporary, or seasonal employment opportunities.

**Public Housing resident** has the meaning given this term in 24 CFR Part 963.

**Recipient** means any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit or local government, PHA, Indian Housing Authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, owner,

PARTICIPANT, developer, limited dividend sponsor, builder, property manager, community development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee, or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

**Secretary** means the Secretary of Housing and Urban Development.

**Section 3** means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u)

**Section 3 Business Concern** means a business concern, as defined in this Section:

- (1) That is 51 percent or more owned by Section 3 residents; or
- (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in Sections (1) or (2) in this definition of "Section 3 Business Concern"

**Section 3 Clause** means the contract provisions set forth in Sec. 135.38.

**Section 3 covered activity** means any activity which is funded by Section 3 covered assistance public and Indian housing assistance.

**Section 3 covered assistance** means:

- (1) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:
  - (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement):
  - (ii) Housing construction; or
  - (iii) Other public construction project (which includes other buildings or improvements regardless of ownership).

**Section 3 covered contract** means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by Section 3.



**Section 3 covered project** means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

**Section 3 resident means:**

- (1) A public housing resident; or
- (2) An individual who resides in the San Bernardino or Riverside County, and who is:
  - (i) A low income person, is defined as families whose incomes do not exceed 80 percent of the median income for the Riverside and San Bernardino Counties, as determined by the Secretary, with adjustments for smaller and larger families.
  - (ii) A very low income person, is defined as families whose incomes do not exceed 50 percent of the median income for the Riverside and San Bernardino Counties, as determined by the Secretary, with adjustments for smaller and larger families.
  - (iii) A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

**Subcontractor** means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a section 3 covered project.

**Very low income person.** See the definition of "Section 3 resident" in this section.

# Exhibit E

## RIVERSIDE COUNTY ECONOMIC DEVELOPMENT AGENCY

### CONTRACTOR CERTIFICATION

#### REGARDING STATUS AS A SECTION 3 BUSINESS CONCERN

I, \_\_\_\_\_, hereby certify that the business  
(print name and title)

known as \_\_\_\_\_  
(print business name)

- \_\_\_\_\_ is not a Section 3 business. (Please complete the bottom section.)
- \_\_\_\_\_ is a Section 3 business **because** (check one of the following):
- \_\_\_\_\_ 51 percent or more is owned by Section 3 residents; or
- \_\_\_\_\_ 30 percent of the permanent full-time employees are currently Section 3 residents or were Section 3 residents when first hired (if within the past three years); **or**
- \_\_\_\_\_ The business commits in writing to subcontract over 25 percent of the total dollar amount of all subcontracts to be let to businesses that meet the requirements of Sections 1 and 2 of this definition;

#### AND

The business was formed in accordance with state law and is licensed under state, county, or municipal law to engage in the business activity for which it was formed.

A Section 3 Resident is a person living in San Bernardino or Riverside County who is a Public Housing resident or who is low income.

Low-Income Persons mean families (including single persons) whose income does not exceed 80 percent of the median income, as adjusted by HUD, for Riverside and San Bernardino Counties.

Signature \_\_\_\_\_ Project \_\_\_\_\_

Date \_\_\_\_\_

Project \_\_\_\_\_ \$ \_\_\_\_\_

Effective 02/2009

Persons in Household	1	2	3	4	5	6	7	8
Low Income Family	\$37,300	\$42,650	\$47,950	\$53,300	\$57,550	\$61,850	\$66,100	\$70,350

A new hire is qualified as a Section 3 resident if he/she resides in Riverside or San Bernardino County and his/her total family income is less than the family income shown above for his/her household size.

## Prohibition Against Conflicts of Interest

### EXHIBIT F

§ 92.356 Conflict of interest.

(a) Applicability. In the procurement of property and services by participating jurisdictions, State recipients, and sub-recipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) Conflicts prohibited. No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with NSP funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a NSP assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the COUNTY, State recipient, or sub-recipient which are receiving NSP funds.

(d) Exceptions: Threshold requirements. Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the NSP Investment Partnerships Program and the effective and efficient administration of the COUNTY's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

- (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
- (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
- (5) Whether undue hardship will result either to the COUNTY or the person affected when weighed against the public interest served by avoiding the prohibited conflict;
- (6) Any other relevant considerations.

Owners/Participants and Developers.

- (1) No owner, developer, or sponsor of a project assisted with NSP funds (or officer, employee, agent or consultant of the owner, developer, or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a NSP assisted affordable housing unit in a project. This provision does not apply to an individual who receives NSP funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.
- (2) Exceptions. Upon written request of owner or developer, the COUNTY may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the NSP program and the effective and efficient administration of the owner's or developer's NSP assisted project. In determining whether to grant a requested exception, the COUNTY shall consider the following factors:
  - (i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;
  - (iii) Whether the tenant protection requirements of § 92.253 are being observed;
  - (iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and
  - (v) Any other factor relevant to the COUNTY's determination, including the timing of the requested exception.

TOPIC: CONFLICT OF INTEREST CODED  
RIVERSIDE COUNTY  
ECONOMIC DEVELOPMENT AGENCY  
DATE: MARCH 1999

This Conflict of Interest Code is written to comply with Federal Regulations (24 CFR Part 85). These Regulations. "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" require that grantees and sub-grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.

- 1) No employee, officer, or agent of the grantee shall participate in the selection, in the award or in the administration of a contract supported by Federal Funds if a conflict of interest, real or apparent, would be involved.
- 2) Such a conflict will arise when:
  - i) The employee, officer or agent;
  - ii) Any member of the immediate family;
  - iii) His/Her partners; or
  - iv) An organization which employs, or is about to employ any of the above has a financial or other interest in the firm's selection for award.
- 3) The grantee's or sub-grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to sub-agreements except as noted in Section 4.
- 4) A grantee's or sub-grantee's officers, employees or agents will be presumed to have a financial interest in a business if their financial interest exceeds the following:
  - i) Any business entity in which the official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.
  - ii) Any real property in which the official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.
  - iii) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the official within 12 months prior to the time when the decision is made.
  - iv) Any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management.
  - v) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the official within 12 months prior to the time when the decision is made.
- 5) For purposes of Section 4, indirect investment or interest means any investment or interest owned by the spouse or dependent child of an official, by an agent on behalf of an official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or more.