

951

**SUBMITTAL TO THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Housing Authority

SUBMITTAL DATE:

June 13, 2013

SUBJECT: Disposition and Development Agreement – Molino Way

RECOMMENDED MOTION: That the Board of Commissioners:

1. Approve an amendment of the Equity Share Restriction terms of the Disposition and Development and template covenant agreement; and

(Continued)

Robert Field
Executive Director

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

COMPANION ITEM ON BOARD OF SUPERVISORS AGENDA: No

SOURCE OF FUNDS: Low and Moderate Income Housing Funds

Positions To Be
Deleted Per A-30

☐

Requires 4/5 Vote

☐

C.E.O. RECOMMENDATION:

APPROVE

BY:
Jennifer L. Sargent

County Executive Office Signature

MINUTES OF THE HOUSING AUTHORITY BOARD OF COMMISSIONERS

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

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley

Nays: None

Absent: None

Date: June 25, 2013

Housing Authority

Kecia Harper-Ihem

Clerk of the Board

By:
Deputy

Prev. Agn. Ref.: 10.1 of 5/10/11

District: 2/2

Agenda Number:

ATTACHMENTS FILED

RECOMMENDED MOTION: (Continued)

2. Authorize the Executive Director, or designee, to take the necessary steps to implement the amendment of the Equity Share Restriction terms of the Disposition and Development Agreement and execute the covenant agreement, as well as other necessary and relevant documents subject to approval by County Counsel.

BACKGROUND:

On May 10, 2011, the Redevelopment Agency for the County of Riverside (RDA) approved a Disposition and Development Agreement (DDA) with the Housing Authority of the County of Riverside (HACR) to provide land and \$173,000 in RDA Low and Moderate Income Housing Funds for the development and construction of a single-family home at 5580 Molino Way, Jurupa Valley, CA 92509 with Assessor Parcel Number 181-082-050. Of that amount, \$40,000 will be set aside for down payment assistance for a qualified low or moderate income first-time homebuyer household. The property previously consisted of a fire damaged four-unit apartment complex.

Pursuant to Assembly Bill (AB) 1X 26, the redevelopment dissolution bill, the County of Riverside Board of Supervisors adopted Resolution No. 2012-035 on January 10, 2012, which designated the HACR as housing successor to the former redevelopment agency. Subsequently, the HACR Board of Commissioners accepted, via adoption of Resolution No. 2012-001, the responsibility for performing all activities as the housing successor to the former RDA. As housing successor, the HACR acknowledges its role to manage and develop the project in accordance with the DDA.

On June 26, 2012, the HACR Board of Commissioners approved the First Amendment to the Disposition and Development Agreement to replace State prevailing wage requirements in line with Davis-Bacon Act wage requirements pursuant to Title 24, Code of Federal Regulations 965.101(a).

As a result of the HACR designation as housing successor to the former RDA; and the transfer of RDA assets to HACR, as housing successor, all interests of the parties to the DDA have been merged, and the DDA has been extinguished. However, HACR, as housing successor, remains obligated to complete the project, pursuant to the terms of the DDA.

Construction of the single-family home is nearly complete and marketing of the home to a qualified homebuyer has commenced. The current equity share restriction is on a sliding scale beginning at zero and allows the homeowner to retain 10% of the appreciation after five years with an additional 10% of the appreciation every five years thereafter, reaching 100% after 45 years.

In order to comply with Federal Housing Administration (FHA) guidelines for secondary financing with affordable housing programs and use of single family mortgage insurance for properties that are not freely transferrable by the borrower/homeowner due to restrictions, the equity share restriction is required to be on a sliding scale beginning at zero and allowing the homeowner to retain 50% of the appreciation within two years. Staff recommends that the Board of Commissioners approve the amendment of the DDA Equity Share Restriction terms and the template covenant agreement to comply with those FHA guidelines using a sliding scale scheme beginning at zero and allowing the homeowner to retain 50% of the appreciation within two years. 100% of the equity will belong solely to the Qualified Homebuyer upon the completion of the 45 year term.

(Continued)

BACKGROUND: (Continued)

County Counsel has reviewed and approved the attached template covenant agreement. Staff recommends that the Board of Commissioners approve the amendment of the DDA Equity Share Restriction terms and template covenant agreement.

FINANCIAL DATA:

No impact to fiscal budget.

Attachment:

Covenant Agreement Template

Attachment A

Template
Covenant Agreement

NO FEE FOR RECORDING PURSUANT
TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Housing Authority for the
County of Riverside
5555 Arlington Avenue
Riverside, CA 92504
Attn: Kari H'Orvath

SPACE ABOVE THIS LINE FOR RECORDERS USE

**AGREEMENT CONTAINING COVENANTS
AFFECTING REAL PROPERTY**

5580 Molino Way, Jurupa Valley, CA 92507, APN 181-082-050

THIS COVENANT AGREEMENT is made this _____ day of _____
2011, by and between the HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, a
public entity, corporate and politic, in its capacity as housing successor to the Former
Redevelopment Agency for the County of Riverside ("AGENCY") and the <INSERT
HOMEBUYER NAME> ("HOMEBUYER"), vesting, with respect to the following recitals:

RECITALS

A. On _____, AGENCY and HOUSING AUTHORITY
OF THE COUNTY OF RIVERSIDE ("DEVELOPER"), a public body, corporate and politics
of the State of California, entered into certain Disposition and Development Agreement (the
"DDA") with the purpose of developing and constructing a single-family home for a low to
moderate-income household.

B. The parcel described below (the "PROPERTY") together with the home to be
constructed on the PROPERTY is the "Assisted Unit" as defined in the Development and
Disposition Agreement ("DDA") dated _____ by and between AGENCY and

DEVELOPER and as specifically identified and described by the following legal description:

1. LEGAL DESCRIPTION OF THE PROPERTY:

Real property in the unincorporated area of the County of Riverside, State of California, with Assessor Parcel Number 181-082-050 and described as follows:
LOT 60 OF FORT SITE, AS SHOWN BY MAP ON FILE IN BOOK 14
PAGE 29 IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE
COUNTY.

C. Pursuant to the DDA, AGENCY has required DEVELOPER to restrict the sale and occupancy of the Assisted Unit.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in the DDA, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HOMEBUYER hereby declares as follows with regard to the Assisted Unit described in this Covenant Agreement, which declaration shall run with the land for the benefit of AGENCY as follows:

1. RESTRICTIONS. For a period of forty-five (45) years from the date of issuance of a certificate of occupancy for the Assisted Unit (the "Affordability Period"), for itself and on behalf of its successors and assigns with regard to such Assisted Unit, the following:

a) Recapture Provision. The principal amount of the AGENCY Down Payment Assistance becomes due and must be repaid to the AGENCY upon the sale, transfer, lease or any other disposition, including refinancing or incurring of additional debt secured by the Property, within the 45 year Affordability Period.

i. The Down Payment Assistance and obligations are forgiven upon the completion of the Affordability Period.

b) Equity Share. Repayment is required upon the sale of the Property within the 45 year Affordability Period.

i. Equity. Equity is defined as the dollar amount that constitutes the

1 difference between the sales price of the Property and the sum of
2 the following:

- 3 1. Principal on the Promissory Note and Deed of
4 Trust;
- 5 2. HOMEBUYER's actual down payment amount
6 whether subsidized or paid with cash.
- 7 3. All costs of sale, including costs of broker's
8 commissions, escrow fees, title costs and fees,
9 recording costs, etc.;
- 10 4. Costs of any capital improvements to the
11 Property, provided such improvements have been
12 documented to be to the satisfaction of the
13 AGENCY; and
- 14 5. Any remainder to AGENCY and HOMEBUYER
15 as agreed.

16 ii. Equity share between the AGENCY and the HOMEBUYER will
17 be based on a forty-five (45) year period according to the
18 following:

- 19 1. Commencing year thirty (30) thru year forty-five
20 (45) any equity earned will be forgiven at a rate of
21 25 percent (25%) per complete five (5) year
22 increment, through the term of this
23 AGREEMENT.
- 24 2. In addition, at the completion of year two (2) the
25 Borrower shall receive Fifty Percent (50%) of the
26 AGENCY's portion of the Equity.
- 27 3. The profit will belong solely to the
28 HOMEBUYER upon the completion of the 45

year term.

Number of Months	Homebuyer's Profit Share	Agency's Profit Share
0 - 359	0%	100%
360 - 419	25%	75%
420 - 479	50%	50%
480 - 540	75%	25%
Thereafter	100%	0%



In addition to the equity due to the Borrower in the table above, at the completion of year two (2) the Borrower shall receive Fifty Percent (50%) of the AGENCY's portion of the Equity. Borrower will receive zero (0) equity within two years from the date of issuance of a certificate of occupancy.

2. MAINTENANCE OF THE IMPROVEMENTS. HOMEBUYER, on behalf of itself and its successors, assigns, and each successor in interest to the Assisted Unit or any part thereof hereby covenants to and shall protect, maintain, and preserve Assisted Unit in compliance with all applicable federal and state law and regulations and local ordinances.

3. NONDISCRIMINATION. HOMEBUYER covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, religion, sex, sexual orientation, marital status, nationality, familial status, source of income or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Assisted Unit, nor shall HOMEBUYER itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the election, location, number, use or occupancy of tenants, lessees, subtenants,

1 sublessees or vendees of the Assisted Unit. The foregoing covenants shall
2 run with the land. HOMEBUYER shall refrain from restricting the sale of
3 the Assisted Unit on the basis of race, religion, sex, sexual orientation,
4 marital status, nationality, familial status, source of income or disability of
5 any person. All such deeds, leases or contracts shall contain or be subject to
6 substantially the following nondiscrimination or no segregation clauses:

7 a) In deeds: "The Grantee herein covenants by and for himself for herself,
8 his or her heirs, executors, administrators and assigns, and all persons
9 claiming under or through them that there shall be no discrimination
10 against or segregation of any person or group of persons on account of
11 race, religion, sex, sexual orientation, marital status, nationality, familial
12 status, source of income or disability in the sale, lease, sublease, transfer,
13 use, occupancy, tenure or enjoyment of the land herein conveyed, nor
14 shall the grantee himself or herself nor any person claiming under or
15 through him or her establish or permit any such practice or practices of
16 discrimination or segregation with reference to the selection, location,
17 numbers use or occupancy of tenants, lessees, subtenants, sublessees or
18 vendees in the land herein conveyed. The foregoing covenants shall run
19 with the land."

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

24 iii. There shall be no discrimination against or segregation of any person
25 or group of persons on account of race, religion, sex, sexual
26 orientation, marital status, nationality, familial status, source of
27 income or disability in the leasing, subleasing, transferring, use,
28 occupancy, tenure or enjoyment of the premises herein leased nor

1 shall the lessee himself or herself, or any person claiming under or
2 through him or her, establish or permit any such practice or practices
3 of discrimination or segregation with reference to the selection,
4 location, number, use or occupancy of tenants, lessees, sublessees,
5 subtenants or vendees in the premises herein leased.”

6 c) In contracts: “There shall be no discrimination against or segregation of
7 any person or group of persons on account of race, religion, sex, sexual
8 orientation, marital status, nationality, familial status, source of income
9 or disability in the sale, lease, sublease, transfer, use, occupancy, tenure
10 or enjoyment of the premises, nor shall the transferee himself or herself
11 or any person claiming under or through him or her, establish or permit
12 any such practice or practices of discrimination or segregation with
13 reference to the selection, location, number, use, or occupancy of
14 tenants, lessees, subtenants, sublessees or vendees of the premises.”

15 5) NOTICES. All Notices provided for in this Agreement shall be deemed
16 when personally delivered, or two (2) days following mailing by certified
17 mail, return receipt requested. All mailing shall be addressed to the
18 respective parties at their addresses set forth below, or at such other address
19 as each party may designate in writing and give to the other party:
20

21 AGENCY

22 Housing Authority of the

23 County of Riverside

24 5555 Arlington Avenue

25 Riverside, CA 92504

26 Attn: Deputy Executive Director

21 DEVELOPER

22 <Homebuyer Name>

23 <Address>

24 <City, State, Zip Code>

27
28 6) BINDING EFFECT. The rights and obligations of this Covenant Agreement

1 shall bind and inure to the benefit of the respective heirs, successors and
2 assigns of the parties.

3 7) SEVERABILITY. In the event that any provision, whether constituting a
4 separate paragraph or whether contained in a paragraph with other
5 provisions, is hereafter determined to be void and unenforceable, it shall be
6 deemed separated and deleted from the agreement and the remaining
7 provisions of this Agreement shall remain in full force and effect.

8 8) SUBORDINATION.

9 a) The parties acknowledge and agree that this Covenant Agreement is and
10 shall be subject and subordinate in all respects to the liens, terms,
11 covenants and conditions of the deed(s) of trust or other documents
12 securing mortgage financing for the Assisted Unit (collectively, the
13 "Senior Financing") and to all advances heretofore made pursuant to the
14 Senior Financing including all sums advanced for the purpose of:

15 (i) protecting or further securing the lien of the Senior Financing,
16 curing defaults by the borrower under the Senior Financing or for any
17 other purpose expressly permitted by the Senior Financing; or

18 (ii) Constructing, renovating, repairing, furnishing, fixtures or
19 equipping the Assisted Unit.

20 The terms and provisions of the Senior Financing are paramount and
21 controlling, and they supersede any other terms and provisions herein
22 conflict therewith. In the event of a foreclosure under the Senior
23 Financing, any other provisions in any other collateral agreement
24 restricting the use of the Property to low or moderate income households
25 or otherwise restricting DEVELOPER's ability to sell the Property shall
26 have no further force or effect on subsequent owners or purchasers of
27 the Assisted Unit, any person, including his/her successors or assignees
28 (other than DEVELOPER or a related entity of DEVELOPER),

1 receiving title to the Property through a foreclosure or deed in lieu of
2 foreclosure of the Senior Financing shall receive title to the Property
3 free and clear from such restrictions.

- 4 b. Further, if the Senior Lender acquires title to the Property pursuant to a
5 deed in lieu of foreclosure, the lien of this Covenant Agreement shall
6 automatically terminate upon the Senior Lender's acquisition of title,
7 provided that (1) AGENCY has been given written notice of a default
8 under the Senior Financing and (2) AGENCY shall not have cured the
9 default under the Senior Financing, or diligently pursued curing the
10 default as determined by the Senior Lender, within the 60-day period
11 provided in such notice sent to the Lender.

12 //

13 //

14 //

15 (END OF AGREEMENT)

16 SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, AGENCY and HOMEBUYER have executed this Agreement as of the date first above written.

AGENCY:
HOUSING AUTHORITY
OF THE COUNTY OF RIVERSIDE

HOMEBUYER:
<NAME>

By: _____
HEIDI MARSHALL
Deputy Executive Director

By: _____
<NAME>
Homebuyer

APPROVED AS TO FORM:
Pamela J. Walls
County Counsel

By: _____
Deputy

FORM APPROVED COUNTY COUNSEL
BY: Anita C. Willis 6-12-13
DATE

(Signatures on this page need to be notarized)

1 CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

2
3 STATE OF CALIFORNIA }

4 COUNTY OF _____ }

5 On _____, before me, _____

6 Date

Here Insert Name and Title of the Officer

7 Personally appeared _____

8 Name(s) of Signer(s)

9 _____,
10 who proved to me on the basis of satisfactory evidence
11 to be the person(s) whose name(s) is/are subscribed to
12 the within instrument and acknowledged to me that
13 he/she/they executed the same in his/her/their authorized
14 capacity(ies), and that by his/her/their signature(s) on the
15 instrument the person(s), or the entity upon behalf of
16 which the person(s) acted, executed the instrument.

17
18 I certify under PENALTY OF PERJURY under the laws
19 of the State of California that the foregoing paragraph is
20 true and correct.

21
22 WITNESS my hand and official seal.

23
24 Signature _____

25 Place Notary Seal Above

26 Signature of Notary Public
27
28

1 CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

2
3 STATE OF CALIFORNIA }

4 COUNTY OF _____ }

5 On _____, before me, _____

6 Date

Here Insert Name and Title of the Officer

7 Personally appeared _____

8 Name(s) of Signer(s)
9 _____

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

17
18 I certify under PENALTY OF PERJURY under the laws
19 of the State of California that the foregoing paragraph is
20 true and correct.

21
22 WITNESS my hand and official seal.

23
24 Signature _____

25 Place Notary Seal Above

26 Signature of Notary Public
27
28