

EXHIBIT "D"

**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 to 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.

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 _____ \$ _____

HUD Effective FY 2017 – Annual Low-Income Limit

| Persons in Household | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|-----------------------------|----------|----------|----------|----------|----------|----------|----------|----------|
| Low-Income Family (80% AMI) | \$36,150 | \$41,300 | \$46,450 | \$51,600 | \$55,750 | \$59,900 | \$64,000 | \$68,150 |

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.

EXHIBIT D-2

§ 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 or 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 action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

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 135 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.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to

Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Prohibition Against Conflicts of Interest

EXHIBIT "E"

§ 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 NSP1 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 NSP1-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 COUNTY, State recipient, or sub-recipient which are receiving NSP1 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 NSP1 Investment Partnerships Program and the effective and efficient administration of 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:

g. 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;

h. 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;

- i. 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;
- j. Whether the interest or benefit was present before the affected person was in a position as described in **paragraph (c)** of this section;
- k. Whether undue hardship will result either to COUNTY or the person affected when weighed against the public interest served by avoiding the prohibited conflict;
- l. Any other relevant considerations.

Owners/Participants and Developers.

- (1) No owner, developer, or sponsor of a project assisted with NSP1 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 NSP1-assisted affordable housing unit in a project. This provision does not apply to an individual who receives NSP1 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, 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 NSP1 program and the effective and efficient administration of the owner's or developer's NSP1-assisted project. In determining whether to grant a requested exception, 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 COUNTY's determination, including the timing of the requested exception.

Community Development Block Grant
Policy Manual, I.D. # A-11

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.

EXHIBIT "G"

Covenant Agreement

1 NO FEE FOR RECORDING PURSUANT
2 TO GOVERNMENT CODE SECTION 6103
3 Order No.
4 Escrow No.
5 Loan No.

6 RECORDING REQUESTED BY AND
7 WHEN RECORDED MAIL TO:

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

13 SPACE ABOVE THIS LINE FOR RECORDERS USE

14 **COVENANT AGREEMENT**
15 **(Villa Hermosa Apartments II)**

16 This Covenant Agreement (Villa Hermosa Apartments II) ("Covenant") is made and
17 entered into as of the day of _____ by and between the
18 COUNTY OF RIVERSIDE, a political subdivision of the State of California ("COUNTY"), and
19 FRED YOUNG PHASE II ASSOCIATES, L.P., a California limited liability partnership
20 ("OWNER").

21 **RECITALS**

22 WHEREAS, OWNER owns that certain real property located on the Southwest corner of
23 Van Buren and Dr. Carreon Boulevard, Indio, California also identified as Assessor's Parcel
24 Number 612-170-017 legally described in **Exhibit A** attached hereto and incorporated herein by
25 this reference (the "Property");

26 WHEREAS, on _____, COUNTY and OWNER entered into that
27 certain Loan Agreement for the Use of Neighborhood Stabilization Program Funds (Villa Hermosa
28 Apartments II) recorded in the Official Records ("Official Records") of the County of Riverside
concurrently herewith (the "NSP1 Loan Agreement or Agreement") which provides for, among
other things, redevelopment and construction on the Property, also known as "Villa Hermosa
Apartments II," a portion of which will be occupied by and rented for very low-income families

1 (the "Project"). Capitalized terms not defined herein shall have the meaning ascribed to them in
2 the NSP1 Loan Agreement;

3 WHEREAS, the Neighborhood Stabilization Program ("NSP1"), which was enacted
4 under Title III of Division B of the Housing and Economic Recovery Act of 2008 ("HERA")
5 and appropriated under Community Development Block Grant (CDBG), was created under the
6 heading of Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes for
7 the purpose of assisting in the redevelopment of abandoned or foreclosed homes. The intent of
8 NSP1 is to stabilize neighborhoods in areas with greatest need and stem the decline of house
9 values of neighboring homes;

10 WHEREAS, pursuant to the NSP1 Loan Agreement, COUNTY loaned to OWNER
11 \$720,000 of NSP1 funds ("NSP1 Loan"), to provide financial assistance to OWNER, to pay a
12 portion of the costs related to the Project, as more fully described in the NSP1 Loan Agreement.
13 The NSP1 Loan is evidenced by a Promissory Note executed by OWNER, in favor of the
14 COUNTY dated on or about the date hereof ("NSP1 Loan Note") and secured by that certain Deed
15 of Trust executed by OWNER, for the benefit of COUNTY and recorded in the Official Records
16 concurrently herewith ("NSP1 Loan Deed of Trust"); and

17 WHEREAS, pursuant to the NSP1 Loan Agreement, OWNER has agreed to redevelop the
18 land and construct a multi-family affordable rental housing project consisting of sixty eight (68)
19 rental units including one (1) residential manager's unit. A total of thirty two (32) units are to be
20 rented to and occupied by qualified very low income households, more specifically 7 two-
21 bedrooms, 17 three-bedrooms, and 8 four-bedrooms, pursuant to the NSP1 Program ("NSP1-
22 Assisted Units") as set forth more specifically below.

23 NOW, THEREFORE, in consideration of the mutual covenants and agreements, and for
24 other good and valuable consideration, the receipt and sufficiency of which are hereby
25 acknowledged, OWNER, on behalf of itself and its successors, assigns, and each successor in
26 interest to the Property or any part thereof, hereby declares as follows:

27 1) RESTRICTIONS. This Covenant shall continue in full force and effect for the later
28 of (i) fifty-five (55) years from the recordation of the Notice of Completion for the last building

1 for which construction is completed for the Project on the Property, or (ii) July 1, 2073 ("Term"),
2 for itself and on behalf of its successors and assigns. For the duration of the term, the Property
3 shall be held, sold and conveyed, subject to the following covenants, conditions, and restrictions:

4 a) Thirty two (32) shall be limited to households whose incomes do not exceed
5 fifty percent (50%) of the area median income for the County of Riverside ("VLI households"),
6 adjusted by family size at the time of occupancy as published by HUD ("NSP1 Assisted Units").

7 The NSP1-Assisted Units shall be a "floating" designation on the Property such that the
8 requirements of this Agreement will be satisfied so long as the total number of NSP1-Assisted
9 Units remains the same throughout the Affordability Period;

10 b) NSP1-Assisted Units shall be rented to and occupied by VLI households
11 that qualify for an affordable rent as defined by the California Health and Safety Code Section
12 50053(b)(2). Affordable rents including utility allowance for VLI households, is the product of 30
13 percent times 50 percent of the area median income adjusted for family size appropriate for the
14 unit. COUNTY shall review and approve proposed rents to the extent required under this section.
15 BORROWER shall ensure the NSP1-Assisted Units are rented to qualified applicants at the
16 described rent levels herein. The maximum monthly allowances for utilities and services
17 (excluding telephone) shall not exceed the utility allowance as described below.

18 c) Utility Allowance: The BORROWER shall use the HUD Utility Schedule
19 Model ("HUSM") to establish maximum monthly allowances for utilities and services to be used
20 by the BORROWER in calculating Rents. The HUSM and use instructions can be found at:
21 <https://www.huduser.gov/portal/resources/utilallowance.html>; and

22 d) OWNER shall comply with the terms of the NSP1 Loan Agreement, NSP1
23 Loan Note, NSP1 Loan Deed of Trust and any other instrument secured against the Property.

24 2) SENIOR PRIORITY. Notwithstanding anything to the contrary contained in the
25 NSP1 Loan Agreement, including any of its attachments this Covenant Agreement shall be
26 recorded in senior position to the following liens: (1) a construction loan from Wells Fargo Bank,
27 N.A. in a principal amount up to \$15,359,498; (2) a permanent loan from United States Department
28

1 of Agriculture ("USDA") in a principal amount up to \$5,300,000; (3) a NSP 1 Deed of Trust for
2 the benefit of COUNTY securing the NSP 1 Loan in the principal amount of \$720,000; (4) a
3 HOME Loan Deed of Trust for the benefit of COUNTY securing a HOME Loan in the principal
4 amount of \$280,000; and (5) a construction loan from AHP in a principal amount up to \$670,000.

5 3) COMPLIANCE WITH LAWS AND REGULATIONS. During the Term of this
6 Covenant, OWNER, for itself and on behalf of its successors and assigns, shall adhere to and
7 comply with all federal, state and local laws, regulations and ordinances., including, but not limited
8 to the following:

9 a) The Neighborhood Stabilization Program as enacted under Title III of
10 Division B of the Housing and Economic Recovery Act of 2008 and Federal Register Notice
11 Docket No. FR-5255-N-01, as amended..

12 b) 24 CFR Section 92.350 Other Federal requirements and nondiscrimination.
13 As set forth in 24 CFR part 5, Subpart A, OWNER is required to include the following
14 requirements: nondiscrimination and equal opportunity under Section 282 of the Act; disclosure;
15 debarred, suspended, or ineligible contractors; and drug-free workplace.

16 c) 24 CFR Section 92.351 Affirmative marketing and minority outreach
17 program. OWNER must adopt affirmative marketing procedures and requirements. These must
18 include:

19 (4) Methods for informing the public, owners, and potential tenants about Federal fair
20 housing laws and the affirmative marketing policy (e.g., the use of the Equal Housing Opportunity
21 logotype or slogan in press releases and solicitations for owners, and written communication to
22 fair housing and other groups).

23 (5) Requirements and practices that OWNER must adhere to in order to carry out the
24 affirmative marketing procedures and requirements (e.g., use of commercial media, use of
25 community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of
26 fair housing poster).

27 (6) Procedures to be used by OWNER to inform and solicit applications from persons
28 in the housing market area who are not likely to apply without special outreach (e.g., use of

1 community organizations, employment centers, fair housing groups, or housing counseling
2 agencies).

3 (7) Records that will be kept describing actions taken by OWNER to affirmatively
4 market units and records to assess the results of these actions.

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

8 (9) OWNER must prescribe procedures to establish and oversee a minority outreach
9 program to ensure the inclusion, to the maximum extent possible, of minorities and women, and
10 entities owned by minorities and women, including, without limitation, real estate firms,
11 construction firms, appraisal firms, management firms, financial institutions, investment banking
12 firms, underwriters, accountants, and providers of legal services, in all contracts entered into by
13 OWNER with such persons or entities, public and private, in order to facilitate the activities of
14 COUNTY to provide affordable housing authorized under this Act or any other Federal housing
15 law. Section 24 CFR 85.36(e) provided affirmative steps to assure that minority business
16 enterprises and women business enterprises are used when possible in the procurement of
17 property and services. The steps include:

- 18 (i) Placing qualified small and minority businesses and
19 women's business enterprises on solicitation lists.
- 20 (ii) Assuring that small and minority businesses, and women's
21 business enterprises are solicited whenever they are
22 potential sources.
- 23 (iii) Dividing total requirements, when economically feasible,
24 into smaller tasks or quantities to permit maximum
25 participation by small and minority business, and women's
26 business enterprises.
- 27 (iv) Establishing delivery schedules, where the requirement
28 permits, which encourage participation by small and

1 minority business, and women's business enterprises.

- 2 (v) Using the services and assistance of the Small Business
3 Administration, and the Minority Business Development
4 Agency of the Department of Commerce.

5 10) TENANT PROTECTIONS. OWNER shall provide protection to the tenants of the
6 COUNTY NSP1 Assisted Units in accordance with the requirements set forth at 24 CFR 92.253
7 and described as follows:

8 a) Provide written lease agreement for not less than one year, unless by
9 mutual agreement between the tenant and OWNER. COUNTY shall review the initial form of
10 the lease agreement prior to OWNER executing any leases and, provided that OWNER uses the
11 approved lease form, OWNER shall be permitted to enter into residential leases without
12 COUNTY's prior written consent.

13 b) Prohibited Lease Terms. The rental agreement/lease may not contain any
14 of the following provisions:

15 (1) *Agreement to be sued*. Agreement by the tenant to be sued, to admit
16 guilt or to a judgment in favor of OWNER in a lawsuit brought in
17 connection with the lease.

18 (2) *Treatment of property*. Agreements by tenant that OWNER may
19 take, hold, or sell personal property of household members without
20 notice to the tenant and a court decision on the rights of the parties.
21 This prohibition, however, does not apply to an agreement by the
22 tenant concerning disposition of personal property remaining in the
23 housing unit after the tenant has moved out of the unit. OWNER
24 may dispose of this personal property in accordance with State law.

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

28 (4) *Waiver of notice*. Agreement of the tenant that OWNER may

1 institute a lawsuit without notice to the tenant.

2 (5) *Waiver of legal proceeding.* Agreement by the tenant that the
3 OWNER may evict the tenant or household members without
4 instituting a civil court proceeding in which the tenant has the
5 opportunity to present a defense, or before a court decision on the
6 rights of the parties.

7 (6) *Waiver of a jury trial.* Agreement by the tenant to waive any right
8 to a trial by jury.

9 (7) *Waiver of right to appeal court decision.* Agreement by the tenant
10 to waive the tenant's right to appeal, or to otherwise challenge in
11 court, a court decision in connection with the lease.

12 (8) *Tenant chargeable with cost of legal actions regardless of outcome.*
13 Agreement by the tenant to pay attorneys' fees or other legal costs
14 even if the tenant wins in a court proceeding by OWNER against
15 the tenant. The tenant, however, may be obligated to pay costs if
16 the tenant loses.

17 (9) *Mandatory supportive services.* Agreement by the tenant (other
18 than a tenant in transitional housing) to accept supportive services
19 that are offered.

20 c) Violence Against Women Reauthorization Act of 2013. (Pub. L. 113-4,
21 127 Stat. 54) ("VAWA 2013"). VAWA 2013 reauthorizes and amends the Violence Against
22 Women Act of 1994, as previously amended, (title IV, sec. 40001-40703 of Pub. L. 103-322, 42
23 U.S.C. 13925 et seq.) VAWA 2013, among other things, bars eviction and termination due to a
24 tenant's status as a victim of domestic violence, dating violence, or stalking, and requires
25 landlords to maintain survivor-tenant confidentiality. VAWA 2013 prohibits a tenant who is a
26 survivor of domestic violence, dating violence, sexual assault, and stalking from being denied
27 assistance, tenancy, or occupancy rights based solely on criminal activity related to an act of
28 violence committed against them. It extends housing protections to survivors of sexual assault,

1 and adds "intimate partner" to the list of eligible relationships in the domestic violence definition.
2 Protections also now cover an "affiliated individual," which includes any lawful occupant living
3 in the survivor's household, or related to the survivor by blood or marriage including the
4 survivor's spouse, parent, brother, sister, child, or any person to whom the survivor stands in loco
5 parentis. VAWA 2013 allows a lease bifurcation so a tenant or lawful occupant who engages in
6 criminal activity directly relating to domestic violence, dating violence, sexual assault, or
7 stalking against an affiliated individual or other individual, or others may be evicted or removed
8 without evicting or removing or otherwise penalizing a victim who is a tenant or lawful occupant.
9 If victim cannot establish eligibility, OWNER must give a reasonable amount of time to find
10 new housing or establish eligibility under another covered housing program. A Notice of Rights
11 under VAWA 2013 for tenants must be provided at the time a person applies for housing, when
12 a person is admitted as a tenant of a housing unit, and when a tenant is threatened with eviction
13 or termination of housing benefits. Tenants must request an emergency transfer and reasonably
14 believe that they are threatened with imminent harm from further violence if the tenant remains
15 in the same unit. The provisions of VAWA 2013 that are applicable to HUD programs are found
16 in title VI of VAWA 2013, which is entitled "Safe Homes for Victims of Domestic Violence,
17 Dating Violence, Sexual Assault, and Stalking." Section 601 of VAWA 2013 amends subtitle N
18 of VAWA (42 U.S.C. 14043e et seq.) to add a new chapter entitled "Housing Rights."

19 11) MAINTENANCE OF THE IMPROVEMENTS. OWNER, on behalf of itself and
20 its successors, assigns, and each successor in interest to the Property and Project or any part thereof
21 hereby covenants to and shall protect, maintain, and preserve the Property in compliance with all
22 applicable federal and state law and regulations and local ordinances. In addition, OWNER, its
23 successors and assigns, shall maintain the improvements on the Property in the same aesthetic and
24 sound condition (or better) as the condition of the Property at the time of the recordation of the
25 Notice of Completion for the Project, reasonable wear and tear excepted. This standard for the
26 quality of maintenance of the Property shall be met whether or not a specific item of maintenance
27 is listed below. However, representative items of maintenance shall include frequent and regular
28 inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or

1 replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash
2 receptacles and removal of litter; sweeping of public sidewalks adjacent to the Property, on-site
3 walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of
4 all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing
5 vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular
6 program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a
7 regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining
8 security devices in good working order. In the event OWNER, its successors or assigns fails to
9 maintain the Property in accordance with the standard for the quality of maintenance, the
10 COUNTY or its designee shall have the right but not the obligation to enter the Property upon
11 reasonable notice to OWNER, correct any violation, and hold OWNER, or such successors or
12 assigns responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the
13 Property.

14 12) NONDISCRIMINATION. OWNER shall not discriminate on the basis of race,
15 gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation,
16 selection, hiring or treatment of any contractors or consultants, to participate in
17 subcontracting/subconsulting opportunities. OWNER understands and agrees that violation of this
18 clause shall be considered a material breach of this Lease and may result in termination, debarment
19 or other sanctions. This language shall be incorporated into all contracts between OWNER and
20 any contractor, consultant, subcontractor, subconsultants, vendors and suppliers. OWNER shall
21 comply with the provisions of the California Fair Employment and Housing Act (Government
22 Code Sections 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended, and
23 all Administrative Rules and Regulations issued pursuant to said Acts and Orders with respect to
24 its use of the Property.

25 OWNER herein covenants by and for itself, its successors and assigns, and all persons
26 claiming under or through them, that this Covenant is made and accepted upon and subject to the
27 following conditions: There shall be no discrimination against or segregation of any person or
28 group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the

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

7 OWNER, its successors and assigns, shall refrain from restricting the rental, sale, or lease
8 of the Property or any portion thereof, on the basis of race, color, creed, religion, sex, sexual
9 orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and
10 contract entered into with respect to the Property, or any portion thereof, after the date of this
11 Agreement shall contain or be subject to substantially the following nondiscrimination or
12 nonsegregation clauses:

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

25 b) In leases: "The lessee herein covenants by and for himself or herself, his or
26 her heirs, executors, administrators, and assigns, and all persons claiming under or through
27 him or her, and this lease is made and accepted upon and subject to the following
28 conditions: That there shall be no discrimination against or segregation of any person or

1 group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955
2 of the Government Code, as those bases are defined in Sections 12926, 12926.1,
3 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2
4 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure,
5 or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any
6 person claiming under or through him or her, establish or permit any such practice or
7 practices of discrimination or segregation with reference to the selection, location, number,
8 use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises
9 herein leased.”

10 c) In contracts: “There shall be no discrimination against or segregation of any
11 person or group of persons, on account of any basis listed in subdivision (a) or (d) of
12 Section 12955 of the Government Code, as those bases are defined in Sections 12926,
13 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
14 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use,
15 occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person
16 claiming under or through him or her, establish or permit any such practice or practices of
17 discrimination or segregation with reference to the selection, location, number, use, or
18 occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

19 In addition to the obligations and duties of OWNER set forth herein, OWNER shall, upon
20 notice from COUNTY, promptly pay to COUNTY all fees and costs, including administrative and
21 attorneys’ fees, incurred by COUNTY in connection with responding to or defending any
22 discrimination claim brought by any third party and/or local, state or federal government entity,
23 arising out of or in connection with the Agreement or this Covenant.

24 13) INSURANCE. Without limiting or diminishing OWNER’s obligation to indemnify
25 or hold COUNTY harmless, OWNER shall procure and maintain or cause to be maintained, at its
26 sole cost and expense, the following insurance coverage’s during the term of this Covenant.

27 a) Worker’s Compensation Insurance. If OWNER has employees as defined by the State of
28 California, OWNER shall maintain statutory Workers’ Compensation Insurance (Coverage

1 A) as prescribed by the laws of the State of California. Policy shall include Employers'
2 Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000
3 per person per accident. The policy shall be endorsed to waive subrogation in favor of the
4 County of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer
5 Endorsement.

6 b) Commercial General Liability Insurance. Commercial General Liability insurance
7 coverage, including but not limited to, premises liability, contractual liability, products and
8 completed operations liability, personal and advertising injury, and cross liability coverage,
9 covering claims which may arise from or out of OWNER's performance of its obligations
10 hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special
11 Districts, and Departments, their respective directors, officers, Board of Supervisors,
12 employees, elected or appointed officials, agents or representatives as Additional Insured.
13 Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single
14 limit. If such insurance contains a general aggregate limit, it shall apply separately to this
15 agreement or be no less than two (2) times the occurrence limit.

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

25 d) General Insurance Provisions – All Lines.

26 i) Any insurance carrier providing insurance coverage hereunder shall be
27 admitted to the State of California and have an A M BEST rating of not less
28 than A: VIII (A:8) unless such requirements are waived, in writing, by Risk

1 Manager. If Risk Manager waives a requirement for a particular insurer such
2 waiver is only valid for that specific insurer and only for one policy term.

3 ii) OWNER's insurance carrier(s) must declare its insurance self-insured
4 retentions. If such self-insured retentions exceed \$500,000 per occurrence such
5 retentions shall have the prior written consent of Risk Manager. Upon
6 notification of self-insured retention unacceptable to COUNTY, and at the
7 election of Risk Manager, OWNER's carriers shall either: (a) reduce or
8 eliminate such self-insured retention, or (b) procure a bond which guarantees
9 payment of losses and related investigations, claims administration, and defense
10 costs and expenses.

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

26 iv) It is understood and agreed to by the parties hereto that OWNER's insurance
27 shall be construed as primary insurance, and COUNTY's insurance and/or
28 deductibles and/or self-insured retention's or self-insured programs shall not be

1 construed as contributory.

2 v) If, during the term of this Covenant or any extension thereof, there is a material
3 change in the scope of services or there is a material change in the equipment
4 to be used in the performance of the scope of work which will add additional
5 exposures (such as the use of aircraft, watercraft, cranes, etc.), then COUNTY
6 reserves the right to adjust the types of insurance required under this Covenant
7 and the monetary limits of liability for the insurance coverage's currently
8 required herein, if; in Risk Manager's reasonable judgment, the amount or type
9 of insurance carried by OWNER has become inadequate.

10 vi) OWNER shall pass down the insurance obligations contained herein to all tiers
11 of subcontractors.

12 vii) OWNER agrees to notify COUNTY in writing of any claim by a third party or
13 any incident or event that may give rise to a claim arising from the performance
14 of the Agreement.

15 14) HOLD HARMLESS/INDEMNIFICATION. OWNER shall indemnify and hold
16 harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their
17 respective directors, officers, Board of Supervisors, elected and appointed officials, employees,
18 agents and representatives (individually and collectively hereinafter referred to as Indemnitees)
19 from any liability whatsoever, based or asserted upon any services of OWNER, its officers,
20 employees, subcontractors, agents or representatives arising out of or in any way relating to this
21 Agreement, including but not limited to property damage, bodily injury, or death or any other
22 element of any kind or nature whatsoever arising from the performance of OWNER, its officers,
23 employees, subcontractors, agents or representatives Indemnitors from this Agreement. OWNER
24 shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost
25 of investigation, defense and settlements or awards, the Indemnitees in any claim or action based
26 upon such alleged acts or omissions. With respect to any action or claim subject to indemnification
27 herein by OWNER shall, at their sole cost, have the right to use counsel of their own choice and
28 shall have the right to adjust, settle, or compromise any such action or claim without the prior

1 consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in
2 no manner whatsoever limits or circumscribes OWNER's indemnification to Indemnitees as set
3 forth herein. OWNER's obligation hereunder shall be satisfied when OWNER has provided to
4 COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action
5 or claim involved. The specified insurance limits required in this Agreement shall in no way limit
6 or circumscribe OWNER's obligations to indemnify and hold harmless the Indemnitees herein
7 from third party claims. In the event there is conflict between this clause and California Civil Code
8 Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation
9 shall not relieve OWNER from indemnifying the Indemnitees to the fullest extent allowed by law.
10 The hold harmless and indemnity obligations set forth herein shall survive the expiration or
11 termination of this Covenant.

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

16 COUNTY

17 Assistant Director, Housing
18 Riverside County
19 Economic Development Agency
5555 Arlington Avenue
Riverside, CA 92504

OWNER

Executive Director
Fred Young Phase II Associates, L.P.
45-701 Monroe Street, Suite G

20 All notices should include a copy to Borrower's limited partner at: _____

21 16) REMEDIES. COUNTY shall have the right, in the event of any breach of any such
22 agreement or covenant, to exercise all available rights and remedies, and to maintain any actions
23 at law or suit in equity or other proper proceedings to enforce the curing of such breach of
24 agreement or covenant.

25 17) TERM. The non-discrimination covenants, conditions and restrictions contained in
26 Section 6 of this Covenant shall remain in effect in perpetuity. Every other covenant, condition
27 and restriction contained in this Covenant shall continue in full force and effect for the Term, as
28 defined in **Section 1** of this Covenant.

1 18) NOTICE AND CURE. Prior to exercising any remedies hereunder, the COUNTY
2 shall give OWNER notice of such default pursuant to section 9 above. Any monetary default shall
3 be cured within ten (10) days of delivery of written notice. Except as otherwise set forth herein,
4 if a non-monetary default is reasonably capable of being cured within thirty (30) days of delivery
5 of such notice of default, OWNER shall have such period to effect a cure prior to exercise of
6 remedies by COUNTY. If the non-monetary default is such that it is not reasonably capable of
7 being cured within thirty (30) days of delivery of such notice of default, and OWNER (a) initiates
8 corrective action within said period, and (b) diligently, continually, and in good faith works to
9 effect a cure as soon as possible, then OWNER shall have such additional time as is reasonably
10 necessary to cure the default prior to exercise of any remedies by the COUNTY; but in no event
11 no later than sixty (60) days from delivery of such notice of default. COUNTY, upon providing
12 OWNER with any notice of default under this Covenant, shall, within a reasonable time, provide
13 a copy of such default notice to a Permitted Lender who has given written notice to COUNTY of
14 its interest in the Property and Project. From and after such notice has been delivered to a Permitted
15 Lender, such Permitted Lender shall have the same period for remedying the default complained
16 of as the cure period provided to OWNER pursuant to this Section 12. COUNTY shall accept
17 performance by a Permitted Lender as if the same had been done by OWNER.

18 If a violation of any of the covenants or provisions of this Covenant remains uncured after
19 the respective time period set forth in this Section 12, COUNTY and its successors and assigns,
20 without regard to whether COUNTY or its successors and assigns is an owner of any land or
21 interest therein to which these covenants relate, may institute and prosecute any proceedings at
22 law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel
23 specific performance by OWNER of its obligations hereunder. No delay in enforcing the
24 provisions hereof as to any breach or violation shall impair, damage or waive the right of any
25 party entitled to enforce the provisions hereof or to obtain relief against or recover for the
26 continuation or repetition of such breach or violations or any similar breach or violation hereof at
27 any later time.

28 Any cure tendered by Borrower's limited partner shall be accepted or rejected on the same

1 basis as if tendered by Borrower.

2 19) SALE, ASSIGNMENT OR TRANSFER OF THE PROJECT OR PROPERTY.

3 OWNER hereby covenants and agrees not to sell, transfer, assign or otherwise dispose of the
4 Project, the Property or any portion thereof, without obtaining the prior written consent of
5 COUNTY, in its sole discretion. Any sale, assignment, or transfer of the Project or Property, shall
6 be memorialized an assignment and assumption agreement the form and substance of which have
7 been first approved in writing by the COUNTY in its sole discretion. Such assignment and
8 assumption agreement shall, among other things, provide that the transferee has assumed in writing
9 and in full, and is reasonably capable of performing and complying with OWNER's duties and
10 obligations under the NSP1 Loan Agreement and this Covenant, provided, however OWNER shall
11 not be released of all obligations under the NSP1 Loan Agreement and this Covenant.

12 20) AMENDMENTS OR MODIFICATIONS. This Covenant may be changed or
13 modified only by a written amendment signed by authorized representatives of both parties.

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

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

23 23) PERMITTED MORTGAGES. No violation or breach of the covenants, conditions,
24 restrictions, provisions or limitations contained in this Covenant shall defeat or render invalid or
25 in any way impair the lien or charge of any deed of trust or mortgage permitted by the Agreement
26 or the lien or charge of a deed of trust made by OWNER for the benefit of any lender first approved
27 in writing by the COUNTY (each, a "Permitted Lender") and nothing herein or in the Agreement
28 shall prohibit or otherwise limit the exercise of a Permitted Lender's rights and remedies

1 thereunder, including a foreclosure or deed-in-lieu of foreclosure and subsequent transfer
2 thereafter.

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

7 25) PROJECT MONITORING AND EVALUATION.

8 a) Tenant Checklist. OWNER shall submit a Tenant Checklist Form to COUNTY, as shown
9 in **Exhibit F** of the NSP1 Loan Agreement, and may be revised by COUNTY,
10 summarizing the racial/ethnic composition, number and percentage of very low-income
11 households who are tenants of the NSP1-Assisted Units. The Tenant Checklist Form shall
12 be submitted upon completion of the construction and thereafter, on a semi-annual basis
13 on or before March 31 and September 30. OWNER shall maintain financial,
14 programmatic, statistical and other supporting records of its operations and financial
15 activities in accordance with the requirements of the NSP1 Program, including the
16 submission of Tenant Checklist Form. Except as otherwise provided for in this Covenant
17 and in the Agreement, OWNER shall maintain and submit records to COUNTY within
18 ten (10) business days of COUNTY's request which clearly documents OWNER's
19 performance under each requirement of the NSP1 Program.

20 b) Inspections. Pursuant to 24 CFR 92.504(d)(1)(ii), during the period of affordability,
21 COUNTY must perform on-site inspections of NSP1-Assisted rental housing to determine
22 compliance with the property standards of §92.251 and to verify the information submitted
23 by the owners in accordance with the requirements of §92.252. The inspections must be
24 in accordance with the inspection procedures that the participating jurisdiction establishes
25 to meet the inspection requirements of §92.251. The on-site inspections must occur at least
26 once every 3 years thereafter during the period of affordability. If there are observed
27 deficiencies for any of the inspectable items in the property standards established by
28 COUNTY, in accordance with the inspection requirements of §92.251, a follow-up on-

1 site inspection to verify that deficiencies are corrected must occur within 12 months.
2 COUNTY may establish a list of non-hazardous deficiencies for which correction can be
3 verified by third party documentation (e.g., paid invoice for work order) rather than re-
4 inspection. Health and safety deficiencies must be corrected immediately, in accordance
5 with §92.251. COUNTY must adopt a more frequent inspection schedule for properties
6 that have been found to have health and safety deficiencies. The property owner must
7 annually certify to the COUNTY that each building and all NSP1-Assisted Units in the
8 project are suitable for occupancy, taking into account State and local health, safety, and
9 other applicable codes, ordinances, and requirements, and the ongoing property standards
10 established by the participating jurisdiction to meet the requirements of §92.251.
11 Inspections must be based on a statistically valid sample of units appropriate for the size
12 of the NSP1-Assisted project, as set forth by HUD through notice. COUNTY will inspect
13 100 percent of the NSP1-Assisted Units and the inspectable items (site, building exterior,
14 building systems, and common areas) for each building housing NSP1-Assisted Units.

15 26) ACCESS TO PROJECT SITE. Representatives of the COUNTY and HUD shall
16 have the right of access to the Property, upon 24 hours' written notice to OWNER (except in the
17 case of an emergency, in which case COUNTY and/or HUD shall provide such notice as may be
18 practical under the circumstances), without charges or fees, during normal business hours to review
19 the operation of the Project in accordance with this Covenant and the Agreement.

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

23 28) Recitals. The Recitals set forth above are true and correct and incorporated herein
24 by this reference.

25 29) This Covenant and the Agreement set forth and contain the entire understanding
26 and agreement of the parties hereto. There are no oral or written representations, understandings,
27 or ancillary covenants, undertakings or agreements, which are not contained or expressly referred
28 to within this Covenant, and the Agreement, including all amendments and modifications to the

1 Agreement.

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[remainder of page intentionally blank]

[SIGNATURES ON THE NEXT PAGE]

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1 IN WITNESS WHEREOF, COUNTY and OWNER have executed this Covenant as of
2 the dates written below.

3 COUNTY:

OWNER:

4 COUNTY OF RIVERSIDE, a political
5 Subdivision of the State of California

Fred Young Phase II Associates,
a California limited liability partnership

6
7 By: Fred Young Phase II, LLC,
a California limited liability company
8 Its: Administrative General Partner

9 By: The Coachella Valley Housing Coalition, a
10 California nonprofit public benefit
11 corporation, its sole member/manager

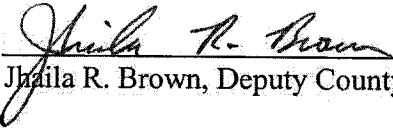
12 By: _____
13 Heidi Marshall, Assistant Director

By: _____
Julie Bornstein, Executive Director

14 Date: _____

Date: _____

15
16
17
18 APPROVED AS TO FORM:
19 GREGORY P. PRIAMOS, County Counsel

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

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA }

COUNTY OF _____ }

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

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

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA }

COUNTY OF _____ }

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

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

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

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY
(Villa Hermosa II Legal)

EXHIBIT "H"

Request for Notices

NO FEE FOR RECORDING PURSUANT
TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

County of Riverside
Economic Development Agency
5555 Arlington Avenue
Riverside, CA 92504
Attn: Stephanie Adams

SPACE ABOVE THIS LINE FOR RECORDERS USE

REQUEST for NOTICE UNDER SECTION 2924b CIVIL CODE

In accordance with Civil Code, Section 2924b, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust dated _____, 2017 and recorded concurrently herewith in the Official Records of the County of Riverside, California, executed by Fred Young Phase II Associates, L.P., a California limited liability partnership, as Trustor in which Wells Fargo Bank, N.A., a national banking association is named as Beneficiary, and _____ as Trustee, and describing land referred to in this Report is situated in the County of Riverside, City of Indio, State of California, and is described as follows:

PARCEL ONE:

(Insert Villa Hermosa II Legal)

All notices to be mailed to:

Attn: Assistant Director
Riverside County EDA
Housing Division
5555 Arlington Avenue
Riverside, California 92504

Request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

RIVERSIDE COUNTY
ECONOMIC DEVELOPMENT AGENCY

John Aguilar, Deputy Director

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA }

COUNTY OF _____ }

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

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

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above



Exhibit I

Sample

Contractor Debarment Certification Form

Excluded Parties Lists System (EPLS)

The purpose of EPLS is to provide a single comprehensive list of individuals and firms excluded by Federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits.

The EPLS was established to ensure that agencies solicit offers from, award contracts, grants, or financial or non-financial assistance and benefits to, and consent to subcontracts with responsible contractors/vendors only and not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion action) that party from participation in an affected program.

In July 2012, all records from CCR/FedReg, ORCA, and EPLS, active or expired, were moved to the System for Award Management (SAM). SAM is a Federal Government owned and operated free web site that consolidates the capabilities in CCR/FedReg, ORCA, and EPLS.

The County of Riverside requires that each contractor/vendor hold the required federal/state/local license for the service provided.

Please complete the following verification process for each contractor/vendor:

- STEP 1: Visit <https://www.sam.gov/portal/public/SAM/>
- STEP 2: Under "Search Records", enter the company name and press enter.
- STEP 3: Click "Print" on the Search Results page.
- STEP 4: Repeat steps 2 & 3 for variations of the name of contractor/vendor (individual last name or firm).
- STEP 5: Attach print out of search results to this certification as supporting documentation.
- STEP 6: Attach to this certification as supporting documentation a copy of contractor/vendor license for the service provided.

By signing below NSP Recipient, developer name, has verified the contractor/vendor known as, name of contractor/vendor, was not listed in the Excluded Parties Lists System and has the required contractor/vendor license as of date of verification.

DEVELOPER SIGNATURE

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

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

6 RECORDING REQUESTED BY AND
7 WHEN RECORDED MAIL TO:

8 County of Riverside
9 Economic Development Agency
10 5555 Arlington Avenue
11 Riverside, CA 92504
12 Attn: Stephanie Adams

13 SPACE ABOVE THIS LINE FOR RECORDERS USE

14 LOAN AGREEMENT FOR THE USE OF
15 HOME PROGRAM FUNDS

16 This LOAN AGREEMENT FOR THE USE OF HOME PROGRAM FUNDS ("Agreement") is
17 made and entered into this _____ day of _____ by and between the COUNTY OF
18 RIVERSIDE, a political subdivision of the State of California ("COUNTY") and FRED
19 YOUNG PHASE II ASSOCIATES, LP, a California limited partnership ("BORROWER"). The
20 COUNTY and BORROWER may be individually referred to herein as a "Party" and collectively
21 as the "Parties."

22 WITNESSETH:

23 WHEREAS, the COUNTY was qualified by the United States Department of
24 Housing and Urban Development ("HUD") as an "Urban County" and an approved participating
25 jurisdiction that has received funds from HUD pursuant to the HOME Investment Partnerships
26 Act and HOME Investment Partnerships ("HOME") Program, which was enacted under Title II
27 of the Cranston-Gonzalez National Affordable Housing Act (the "Act"), as amended
28 (commencing at 42 U.S.C. 12701 et seq.), and the implementing regulations thereto (24 CFR
Part 92) (collectively, the "HOME Program"). The purpose of the HOME Program is to expand
the supply of decent, safe, sanitary, and affordable housing with primary attention to rental
housing, for very low-income and low-income families; to strengthen public-private partnerships
to carry out affordable housing programs; and to provide for coordinated assistance to

1 participants in the development of affordable low-income housing;

2 WHEREAS, pursuant to the HOME Program (24 CFR Section 92.300), the
3 County has reserved not less than fifteen percent (15%) of its allocation of HOME Program
4 funds for investment in housing to be developed, sponsored, or owned by community housing
5 development organizations (“CHDOs”);

6 WHEREAS, BORROWER has been certified with the COUNTY as a qualified
7 CHDO under the HOME Program that has among its purposes the provision of decent housing
8 that is affordable to low income persons, and has submitted a proposal to the County for use of
9 CHDO set aside funds for a CHDO-eligible project as described herein;

10 WHEREAS, BORROWER’s administrative general partner is Fred Young Phase
11 II, LLC, a California limited liability company, whose sole member/manager is The Coachella
12 Valley Housing Coalition, a California nonprofit public benefit corporation and qualified CHDO;

13 WHEREAS, BORROWER has proposed to utilize HOME funds to pay a portion
14 of the costs to develop and construct a multi-family affordable rental housing project consisting
15 of sixty eight (68) rental housing units including one (1) residential manager’s unit to be rented
16 and occupied by farmworker households (“Project”), on an approximately 6.32 acres of vacant
17 land situated on the southwest corner Van Buren Street and Dr. Carreon Boulevard in the City
18 of Indio, also identified as APN 612-170-017 as more specifically described in the legal
19 description and depicted on the site map attached hereto as **Exhibit A** and incorporated herein
20 by this reference (“Property”);

21 WHEREAS, Project is part of a master site plan to construct new units to relocate
22 residents residing in Fred Young Farm Labor Center (“Fred Young”), which consists of 253
23 residential units;

24 WHEREAS, a total of eleven (11) units will be reserved as HOME assisted units
25 to be rented to and occupied by qualified very low income tenants, with priority given to
26 farmworker households whose incomes do not exceed 50% of the area median income for the
27 County of Riverside as determined (“HOME-Assisted Units”);

28 WHEREAS, the purpose of this Agreement is, among other things, for COUNTY

1 to provide financial assistance to BORROWER in the maximum amount of Two Hundred and
2 Eighty Thousand Dollars (\$280,000 consisting of HOME CHDO set-aside funds, to pay a portion
3 of development and construction costs related to the Project, as more fully described herein; and

4 WHEREAS, the HOME-assisted activities described herein comply with the
5 objectives required under 24 Code of Federal Regulations ("CFR") Part 92 and are consistent
6 with the County's Consolidated Plan.

7 NOW, THEREFORE, based upon the foregoing Recitals and for good and
8 valuable consideration, the receipt and sufficiency of which is acknowledged by all Parties, the
9 COUNTY and BORROWER hereby agree as follows:

10 1. PURPOSE. The aforementioned Recitals are true and correct and
11 incorporated herein by this reference. COUNTY has agreed to lend no more than a maximum
12 total amount of TWO HUNDRED AND EIGHTY THOUSAND DOLLARS (\$280,000) in
13 HOME funds ("HOME Loan") to BORROWER upon the satisfaction of the terms and
14 conditions set forth herein, including but not limited to the conditions precedent to distribution
15 of HOME Loan funds set forth in **Section 11** below. Subject to **Sections 49** and **50** below,
16 BORROWER shall undertake and complete the HOME activities required herein and as set forth
17 in **Exhibit A**, and shall utilize the HOME Loan funds, as required herein and pursuant to the
18 HOME Program regulations. A total of 11 units consisting of 3 three-bedrooms and 8 four-
19 bedrooms shall be reserved as HOME-Assisted Units. During the Affordability Period (as
20 defined in **Section 14** below), the HOME-Assisted Units shall be rented to and occupied by
21 households that qualify as very low income households pursuant to 24 CFR Section 92.2
22 ("Qualified Very Low Income Households") for an affordable rent pursuant to 24 CFR Section
23 92.252, **Sections 18 and 19** below, **Exhibit A**, and the Covenant Agreement attached hereto as
24 **Exhibit G** and incorporated herein by this reference. To remain a Qualified Very Low Income
25 Household, such household shall occupy their respective unit within the Project as their principal
26 residence.

27 2. BORROWER'S OBLIGATIONS. Upon the commencement of the
28 Effective Date (defined in **Section 56** below), BORROWER hereby agrees to undertake and

1 complete the following activities within the time periods set forth herein and in **Exhibit A**:

- 2 a. Satisfy the conditions precedent to distribution of HOME Loan funds
3 set forth in **Section 11** below.
- 4 b. Develop the Project in accordance with the timeline set forth in **Exhibit**
5 **A**.
- 6 c. Operate the Project in such a manner so that it will remain affordable
7 to Qualified Very Low Income Households for the Affordability Period
8 as defined in **Section 14** below without regard to (i) the term of the
9 promissory note or (ii) transfer of ownership.
- 10 d. Maintain the Project in compliance with applicable local, state, federal
11 laws, codes and regulations as further described in **Section 17** below
12 until the expiration of the Term of this Agreement set forth in **Section**
13 **6** below and the Affordability Period set forth in **Section 14** below.
- 14 e. Provide the COUNTY the Data Universal Number as assigned by the
15 Data Universal Number System (DUNS) assigned to BORROWER as
16 required by the Federal Funding Accountability and Transparency Act
17 of 2006.
- 18 f. Cooperate with the Riverside County Work Force Development Center
19 (WDC) and post all jobs created, if any, as a result of this Project with
20 the WDC. Evidence of posted jobs, if any, shall be submitted to the
21 COUNTY prior to start of construction.

22 3. Reserved.

23 4. HOME Loan. Subject to BORROWER's satisfaction of the conditions
24 precedent to disbursement of the HOME Loan set forth in **Section 11** below, COUNTY shall
25 provide financing to Borrower in the form of a loan in the amount of \$280,000 ("HOME Loan"),
26 pursuant to the following terms and conditions:

- 27 a. Term of HOME Loan. The maturity date of the HOME Loan shall be
28 the later to occur of (i) July 1, 2073 or (ii) fifty-five (55) years from the

1 recordation of the Notice of Completion in the Official Records for the
2 last building for which construction is completed for the Project (the
3 "HOME Loan Term"). The term, "Official Records" used herein shall
4 mean the Official Records of the Recorder's Office of the County of
5 Riverside.

6 b. Principal. The total amount of the HOME Loan shall not exceed
7 \$280,000, and shall be evidenced by a Promissory Note, substantially
8 conforming in form and substance to the Promissory Note attached
9 hereto as **Exhibit C** and incorporated herein by this reference ("HOME
10 Note"), which note shall be secured by a Deed of Trust and Assignment
11 of Rents, substantially conforming in form and substance to the Deed
12 of Trust and Assignment of Rents attached hereto as **Exhibit B** and
13 incorporated herein by this reference ("HOME Deed of Trust").

14 c. Interest. The interest rate shall be three percent (3%) simple interest
15 per annum.

16 d. Repayment. The terms of the HOME Note shall be as follows:

17 1. That the HOME Loan will accrue simple interest at a rate of
18 three percent (3%) per annum, except in the case of an event of
19 default as hereinafter provided wherein a higher default interest
20 rate shall apply as more specifically set forth in the HOME
21 Note, and shall be repaid on an annual basis from the Project's
22 Residual Receipts (defined in **Section 4 (d)(4)** below). Interest
23 will begin to accrue 30 days from the recordation of the Notice
24 of Completion in the Official Records.

25 2. The HOME Note shall be repaid by BORROWER to COUNTY
26 as follows:

27 i) Fifty percent (50%) of the Project's Residual
28 Receipts shall be used towards the payment of

1 certain loans secured by the Project, which include
2 the HOME Loan and the County of Riverside
3 Neighborhood Stabilization Program Funds loan in
4 the approximate amount of \$720,000 ("County NSP
5 Loan"). (collectively "Residual Receipts Loans").
6 The payment of 50% of the Residual Receipts shall
7 be allocated to the Residual Receipts Loans on a pro
8 rata basis (i.e. allocated in proportion to its share of
9 the total amount of Residual Receipts Loans) , until
10 the HOME Note is repaid in full; and

11 ii) The remaining fifty percent (50%) of the Project's
12 Residual Receipts will be paid to BORROWER.

13 3. The Project's Residual Receipts shall be determined based on
14 an annual review of certified financial statements for the
15 Project. Annual audited financial statements shall be submitted
16 by BORROWER to COUNTY within one hundred twenty
17 (120) days following the close of the project fiscal year
18 commencing on April 1st of the first full calendar year
19 following the recordation of the Notice of Completion. All
20 outstanding principal along with accrued interest shall be due
21 upon the maturity date of the HOME Note and the expiration
22 of the HOME Loan Term as set forth in **Section 4(a)**. The first
23 payment from BORROWER to COUNTY shall be due on July
24 1st in the first full calendar year following the date of the
25 recordation of the Notice of Completion, to the extent of
26 available Residual Receipts, as set forth herein. Subsequent
27 payments shall be made on July 1st thereafter to the extent of
28 available Residual Receipts until the earlier of full repayment

1 of the HOME Loan or the HOME Loan maturity date as set
2 forth above.

3 4. The term "Project's Residual Receipts" as used herein shall
4 mean gross receipts, not including interest on required reserve
5 accounts, less the following costs reasonably and actually
6 incurred for operation and maintenance of the project:

- 7 i) auditing and accounting fees;
- 8 ii) a reasonable property management fee not to exceed
9 \$55 per unit per month, increased annually by an
10 amount equal to the increase in the Consumer Price
11 Index for Los Angeles-Riverside-Orange County,
12 CA area ("CPI"), provided, however, that in the
13 event of a decrease in the CPI, the property
14 management fee shall remain the same as the
15 immediate preceding year;
- 16 iii) Operating Expenses (any expense reasonably and
17 normally incurred in carrying out the Project's day-
18 to-day activities, which shall include
19 administration, on-site management, utilities, on-
20 site staff payroll, payroll taxes, and maintenance);
- 21 iv) replacement reserves, established in a separate
22 account from operating reserves, limited to \$400 per
23 unit for all units in the Project, as defined in Exhibit
24 A, increased annually by an amount equal to the
25 increase in CPI;
- 26 v) Operating Reserves in an amount up to \$25,000;
- 27 vi) deferred developer's fee ;
- 28 vii) asset management fee payable to the limited partner

1 in an amount not to exceed \$5,000 per year,
2 increasing at CPI annually and partnership
3 management fee payable to the general partner in an
4 amount not to exceed \$5,000 per year, increasing at
5 CPI annually (and terminating after the expiration
6 of the 15-year tax credit compliance period);

7 viii) payments of principal and interest on amortized
8 loans and indebtedness senior to the HOME Loan,
9 which have been approved by COUNTY
10 (collectively, the "Senior Debt"); and

11 ix) COUNTY's Annual Monitoring Fee in the total
12 annual amount of \$6,8000 increased annually by an
13 amount equal to the increase of the Consumer Price
14 Index (CPI), as more specifically discussed in
15 **Section 28**

16 Operating Expenses shall not include repayment of advances to the
17 BORROWER from its limited partner(s), general partner(s), their affiliates, and/or third parties
18 (including without limitation, any advances of any portion of the Deferred Developer's Fee to
19 pay (or reimburse for) and construction cost overruns), depreciation, amortization, depletion or
20 other non-cash expenses, any amount expended from a reserve account, and any capital cost
21 associated with development of the project. The calculation of Operating Expenses shall be
22 subject to the reasonable approval of the COUNTY's Assistant County Executive Officer/EDA
23 or designee.

24 5. Security. During the construction phase the HOME Deed of Trust
25 and this Agreement shall be in a fifth priority lien position. Upon
26 Conversion (defined below), the HOME Deed of Trust shall bump
27 up to a sixth priority lien position. Lien priority during construction
28 shall be as follows: (1) deed of trust for the benefit of Wells Fargo

1 Bank, N.A. ("Wells Fargo") securing a construction loan for the
2 Project in an amount up to \$15,359,498 ("Wells Fargo Senior
3 Loan"); (2) deed of trust for the benefit of the United States
4 Department of Agriculture ("USDA") 514 Loan in an amount up to
5 \$3,000,000; (3) deed of trust for the benefit of the USDA 514 Loan
6 in an amount up to \$2,300,000 (collectively "USDA Loans"); (4)
7 deed of trust for the benefit of the County of Riverside securing the
8 County NSP Loan up to \$780,000 ("County NSP Loan"); and (5)
9 HOME Loan secured by the HOME Deed of Trust for the benefit
10 of COUNTY securing the HOME Loan and the terms of this
11 Agreement in fifth priority position junior to the above deeds of
12 trust from Wells Fargo, USDA and the County of Riverside
13 ("Senior Loan" or "Senior Loans") and in sixth priority position
14 shall be (8) deed of trust for the benefit of the Affordable Housing
15 Program (AHP) loan in the amount of \$670,000 ("AHP Loan").
16 Lien priority upon Conversion shall be as follows (i) USDA Loans
17 in 1st and 2nd priority, (ii) two Deeds of Trusts for the benefit of two
18 loans in the total amount \$630,000 assumed from Fred Young for
19 the benefit of the United States Department of Agriculture ("USDA
20 Assumed Loans"), (iii) County NSP Loan in 5th priority, (iv)
21 HOME Loan in 6th priority, and (v) AHP Loan in 7th priority.
22 Borrower shall cause the Senior Loans or any other COUNTY
23 approved senior lender to execute and record in the Official
24 Records, a Subordination Agreement, substantially in a form and
25 of substance approved by the COUNTY, which, among other
26 things, grants the COUNTY notice and opportunity to cure events
27 of default under the Senior Loan documents.

28 The term "Conversion" used herein shall mean that certain date upon which (i) the Form 8609 for

1 the project is issued by January, 2020, and (ii) the Deed of Trust securing the Wells Fargo Senior
2 Loan is fully reconveyed.

- 3 e. Prepayment. Prepayment of principal and/or interest under the HOME
4 Note may occur at any time without penalty; provided, however (i) the
5 requirements of **Section 17, Compliance with Laws and Regulations**,
6 shall remain in full force and effect for the term of the Agreement
7 specified in **Section 6** below; and (ii) the affordability requirements set
8 forth in the Covenant Agreement, attached hereto as **Exhibit G**, shall
9 remain in effect until the expiration of the Affordability Period.

10 5. PRIOR COUNTY APPROVAL.

11 a. Except as otherwise expressly provided in this Agreement,
12 approvals required of the COUNTY shall be deemed granted by the written approval of the
13 Assistant County Executive Officer for the Economic Development Agency or designee
14 (“Assistant CEO/EDA”). Notwithstanding the foregoing, the Assistant CEO/EDA may, in his
15 or her sole discretion, refer to the governing body of the COUNTY any item requiring COUNTY
16 approval; otherwise, “COUNTY approval” means and refers to approval by the Assistant
17 CEO/EDA or designee.

18 b. The Assistant CEO/EDA or designee shall have the right to make
19 non-substantive changes to the attachments to this Agreement in order to ensure that all such
20 attachments are consistent with the terms and provisions of this Agreement.

21 6. TERM OF AGREEMENT. This Agreement shall become effective upon
22 the Effective Date, as defined in **Section 56** below, and unless terminated earlier pursuant to the
23 terms hereof, shall continue in full force and effect until the later to occur of (i) July 1, 2073 or
24 (ii) fifty-five (55) years from the recordation of the Notice of Completion in the Official Records
25 for the last building for which rehabilitation is completed for the Project (“Term of Agreement”).

26 7. BORROWER’S REPRESENTATIONS. BORROWER represents and
27 warrants to COUNTY as follows:

- 28 a. Authority. BORROWER is a duly organized limited partnership

1 in good standing under the laws of the State of California. The
2 copies of the documents evidencing the organization of
3 BORROWER, which have been delivered to COUNTY, are true
4 and complete copies of the originals, amended to the date of this
5 Agreement. BORROWER has full right, power and lawful
6 authority to enter into this Agreement and accept the loan of HOME
7 Loan funds and undertake all obligations as provided herein. The
8 execution, performance and delivery of this Agreement by
9 BORROWER have been fully authorized by all requisite actions
10 on the part of BORROWER.

11 b. No Conflict. To the best of BORROWER's knowledge,
12 BORROWER's execution, delivery and performance of its
13 obligations under this Agreement will not constitute a default or a
14 breach under contract, agreement or order to which BORROWER
15 is a party or by which it is bound.

16 c. No Bankruptcy. BORROWER is not the subject of a bankruptcy
17 proceeding.

18 d. Prior to Closing. BORROWER shall upon learning of any fact or
19 condition which would cause any of the warranties and
20 representations in this **Section 7** not to be true as of Closing,
21 immediately give written notice of such fact or condition to
22 COUNTY. Such exception(s) to a representation shall not be
23 deemed a breach by BORROWER hereunder, but shall constitute
24 an exception which COUNTY shall have the right to approve or
25 disapprove if such exception would have an effect on the value
26 and/or operation of the Project Site.

27 8. COMPLETION SCHEDULE. BORROWER shall proceed consistent
28 with the implementation schedule ("Implementation Schedule") set forth in **Exhibit A**, (as such

1 schedule may be amended pursuant to **Section 10)** and subject to Force Majeure Delays, as
2 defined in **Section 9**.

3 9. **FORCE MAJEURE DELAYS.** "Force Majeure" means event(s) beyond
4 the reasonable control of BORROWER, and which could not have been reasonably anticipated,
5 which prevent(s) BORROWER from complying with any of its obligations under this
6 Agreement, including, but not limited to: acts of God, acts of war, acts or threats of terrorism,
7 civil disorders, strikes, labor disputes, flood, fire, explosion, earthquake or other similar acts.

8 "Force Majeure Delay" is delay due to Force Majeure that, in each case, (i)
9 materially adversely affects the performance by BORROWER of its obligations hereunder, (ii)
10 is not reasonably foreseeable and is beyond BORROWER's reasonable control, (iii) despite the
11 exercise of reasonable diligence, cannot be prevented, avoided or removed by BORROWER and
12 is not attributable to the negligence, willful misconduct or bad faith of BORROWER, and (iv) is
13 not the result of the failure of BORROWER to perform any of its obligations under this
14 Agreement. Notwithstanding the foregoing, a Force Majeure Delay shall not be deemed to have
15 occurred unless BORROWER has notified COUNTY in writing of such occurrence of Force
16 Majeure within fifteen (15) days after such occurrence and has provided COUNTY with the
17 details of such event and the length of the anticipated delay within an additional fifteen (15) days
18 thereafter. BORROWER shall diligently attempt to remove, resolve, or otherwise eliminate such
19 event, keep COUNTY advised with respect thereto, and shall commence performance of its
20 obligations hereunder immediately upon such removal, resolution or elimination. During the
21 occurrence and continuance of a Force Majeure Delay, BORROWER shall be excused from
22 performance of its obligations under this Agreement to the extent the Force Majeure prevents
23 BORROWER from performing such obligations.

24 10. **EXTENSION OF TIME.** COUNTY may grant an extension to the
25 Implementation Schedule set forth in **Exhibit A** for the purpose of completing BORROWER's
26 activities which cannot be completed as outlined in **Exhibit A**. BORROWER shall request said
27 extension in writing, stating the reasons therefore, which extension must be first approved in
28 writing by the COUNTY in its reasonable discretion. The Assistant CEO/EDA or designee, on

1 behalf of the COUNTY and without referring such matter to the County's Board of Supervisor's
2 may extend all pending deadlines in the Implementation Schedule on two (2) or fewer occasions,
3 so long as the aggregate duration of such administrative time extensions is no greater than ninety
4 (90) days. Every term, condition, covenant, and requirement of this Agreement shall continue
5 in full force and effect during the period of any such extension.

6 11. CONDITIONS PRECEDENT TO DISTRIBUTION OF HOME LOAN
7 FUNDS. COUNTY, through its Economic Development Agency ("EDA"), shall: (1) make
8 payments of the HOME Loan funds to BORROWER as designated in **Exhibit A** subject to
9 Borrower's satisfaction of the conditions precedent set forth below, and (2) monitor the Project
10 to ensure compliance with applicable federal regulations and the terms of this Agreement.
11 COUNTY shall not disburse any HOME Loan funds pursuant to this Agreement until the
12 following conditions precedent have been satisfied:

- 13 a. BORROWER executes this Agreement and delivers to COUNTY for
14 recordation in the Official Records;
- 15 b. Borrower submits written evidence to COUNTY that Borrower has
16 obtained sufficient financing commitments necessary to undertake the
17 acquisition and rehabilitation of the project as required herein;
- 18 c. BORROWER provides COUNTY with the Data Universal Number as
19 assigned by the Date Universal Number System assigned to Borrower
20 as required by the Federal Accountability and Transparency Act of
21 2006;
- 22 d. BORROWER provides COUNTY with evidence of insurance as
23 required herein;
- 24 e. BORROWER executes the HOME Deed of Trust, substantially
25 conforming in form and substance to the Deed of Trust and Assignment
26 of Rents attached hereto as **Exhibit B**, in recordable form, and delivers
27 such document to the County of Riverside for recordation in the
28 Official Records;

- 1 f. BORROWER executes the HOME Note, substantially conforming in
2 form and substance to the Promissory Note attached hereto as **Exhibit**
3 **C** and delivers to COUNTY;
- 4 g. BORROWER executes the Covenant Agreement, substantially
5 conforming in form and substance to the Covenant Agreement attached
6 hereto as **Exhibit G** and incorporated herein by this reference, in
7 recordable form, and delivers to the County of Riverside for
8 recordation in the Official Records;
- 9 h. COUNTY executes and records the Requests for Notice of Default
10 conforming in form and substance to **Exhibit H** attached hereto;
- 11 i. BORROWER provides, at its expense, an ALTA lender's policy in
12 favor of COUNTY, insuring the HOME Deed of Trust as a fourth
13 priority lien against the Property junior only to the Senior Loans
14 identified in **Section 4(d)(5)**;
- 15 j. BORROWER provides satisfactory evidence that it has all the
16 financing documents required to cause the proceeds of the Senior
17 Loans, when combined with the HOME Loan, to pay for all
18 development and construction costs for the Project;
- 19 k. BORROWER is not in default under the terms of this Agreement or
20 any other agreement related to the financing of the Project;
- 21 l. BORROWER submits evidence that all jobs created, if any, as a result
22 of this project shall be posted with the Riverside County Workforce
23 Development Center (WDC);
- 24 m. BORROWER provides satisfactory evidence that it has secured any
25 and all land use entitlements, permits, approvals which may be required
26 for construction of the Project pursuant to the applicable rules and
27 regulations of COUNTY, or any other governmental agency affected
28 by such construction work. BORROWER shall, without limitation,

1 secure all entitlement, change of zone, lot line adjustment, any and all
2 necessary studies required including but not limited to archaeological,
3 cultural, environmental, traffic studies and lead-based paint surveys, as
4 applicable, and required, and pay all costs, charges and fees associated
5 therewith, all conditions precedent to the issuance of all permits
6 necessary for the construction of the Project and all such permits are
7 available for issuance, other than payment of fees;

8 n. BORROWER provides duly executed documents and instruments
9 evidencing that BORROWER owns fee title to the Property;

10 o. BORROWER provides satisfactory evidence that it has satisfied all
11 conditions precedent to the issuance of all permits necessary for the
12 rehabilitation of the development and all such permits are available for
13 issuance, other than payment of fees;

14 p. BORROWER consults and complies with concerned Native American
15 tribes pursuant to Section 106 requirements, including entering into a
16 Native American monitoring agreement, and if necessary, a cultural
17 resource treatment and disposition agreement;

18 q. If Davis Bacon and/or prevailing wages are required to be paid,
19 BORROWER hires a qualified professional firm to review and monitor
20 Davis Bacon and/or prevailing wage compliance for all submissions of
21 contractors certified payrolls to COUNTY. In the event that the Project
22 requires prevailing wages, BORROWER shall comply with any
23 applicable labor regulations and all other State laws in connection with
24 the construction of the improvements which compromise the Project,
25 including if applicable, requirements relating to prevailing wages.
26 BORROWER agrees and acknowledges that it is the responsibility of
27 BORROWER to obtain legal determination, at BORROWER's sole
28 cost and expense, as to whether prevailing wages must be paid during

1 the construction of the Project. If the Project is subject to prevailing
2 wage, then BORROWER shall be solely responsible to pay its
3 contractors and subcontractors the required prevailing wage rates.
4 BORROWER agrees to indemnify, defend, and hold COUNTY
5 harmless from and against any and all liability arising out of and related
6 to BORROWER's failure to comply with any and all applicable Davis
7 Bacon and/or prevailing wage requirements;

8 r. Pursuant to 24 CFR, Part 5, BORROWER agrees to verify that
9 BORROWER, and its principals, or any/all persons, contractors,
10 consultants, businesses, etc. ("Developer Associates"), that
11 BORROWER is conducting business with, are not presently debarred,
12 proposed for debarment, suspended, declared ineligible, or voluntarily
13 excluded from participation or from receiving federal contracts or
14 federally approved subcontracts or from certain types of federal
15 financial and nonfinancial assistance and benefits with the Excluded
16 Parties Listing System ("EPLS"). EPLS records are located at
17 www.sam.gov; and

18 s. BORROWER shall search and provide a single comprehensive list of
19 Developer Associates (individuals and firms) and print and maintain
20 evidence of the search results of each Developer Associate as
21 verification of compliance with this requirement as provided in **Exhibit**
22 **I**, Contractor Debarment Certification Form, which is attached hereto
23 and by this reference incorporated herein.

24 COUNTY shall retain ten percent (10%) of the total HOME Loan amount and
25 release final draw down of HOME funds until COUNTY receives all of the following:

- 26 1) Conditional lien release from general contractor;
- 27 2) recorded Notice of Completion;
- 28 3) Permanent Certificate of Occupancy;

- 1 4) architect certification identifying units that are accessible to
- 2 individuals with mobility impairments and units that are
- 3 accessible to individuals with sensory impairments in
- 4 compliance with Section 504 of the Rehabilitation Act of
- 5 1973, as described in **Section 17(i)**;
- 6 5) final Contract and Subcontract Activity report, Minority
- 7 Business Enterprise/Women Business Enterprise
- 8 (“MBE/WBE”) report, HUD form 2516;
- 9 6) submission of documentation that shows compliance with
- 10 the Uniform Relocation Assistance and Real Property
- 11 Acquisition Policies Act of 1970 and 24 CFR Part 42;
- 12 7) submission of a Project completion report including Tenant
- 13 Checklist as shown in **Exhibit F** which is attached hereto
- 14 and by this reference incorporated herein;
- 15 8) Affirmative Fair Housing Marketing Plan – Multifamily
- 16 Housing, HUD form 935.2A, as described in **Section 17(c)**;
- 17 9) Tenant Selection Policy;
- 18 10) Management Plan;
- 19 11) Certified statement of final development costs; and
- 20 12) Certified statement of final sources and uses of funds for the
- 21 project.

22 12. REALLOCATION OF FUNDS. If Borrower fails to meet (1) the

23 Construction Start Deadline as set forth in **Section 49(a)**, (2) the Completion Deadline as set

24 forth in **Section 49(b)**, (3) the Lease Deadline as set forth in **Section 19(b)**, or (4) the Project

25 Financing Contingency in **Section 50**, all of which are herein (collectively, the “Performance

26 Deadlines”), subject to the notice and cure periods set forth in **Section 32** herein, then the HOME

27 Loan funds allocated, reserved, or placed in a HOME Investment Trust Fund account pursuant

28 to this Agreement may be reallocated by COUNTY after at least thirty (30) days’ prior written

1 notice is given to BORROWER. Upon such reallocation and repayment of funds, this
2 Agreement shall be terminated and be of no further force and effect and Borrower shall be
3 released and discharged from any obligations under this Agreement, except as to those
4 obligations which by their terms survive termination of this Agreement.

5 12a.) CHDO DESIGNATION. Pursuant to 24 CFR 92.300(a), the Project
6 is funded using HOME CHDO set aside ("Set-Aside") funds as that term
7 is defined in 24 CFR 92.300(a). Borrower hereby understands and agrees
8 that the HOME CHDO Set Aside funds provided by County for this Project
9 pursuant to this Agreement must be allocated only for housing developed,
10 sponsored or owned by a CHDO, its subsidiary or partnership of which it
11 or its subsidiary is the managing general partner. Borrower represents that
12 since BORROWER is the sole owner and manager of the Project, it is
13 eligible to receive HOME funds and conduct activities pursuant to this
14 Agreement. Any proposed sale, assignment or other transfer of the Project
15 shall be subject to the provisions set forth in **Section 23**, Sale or Transfer
16 of the Project, herein.

17 13. DISTRIBUTION OF FUNDS. The HOME Investment Trust Fund account
18 established in the United States Treasury is managed through HUD, Integrated Disbursement
19 and Information System (IDIS) for the HOME Investment Partnerships Program. The IDIS
20 System is a computerized system which manages, disburses, collects, and reports information on
21 the use of HOME funds in the United States Treasury Account. Disbursement of HOME funds
22 shall occur upon the satisfactory receipt of copies of invoices and conditional (upon receipt of
23 payment) lien releases for construction costs to be paid with the proceeds of the HOME Loan.
24 Any disbursement of funds is expressly conditioned upon the satisfaction of conditions set forth
25 in **Section 11**. COUNTY shall pay to BORROWER the sum specified in **Section 1** above on a
26 "cost-as-incurred" basis for all eligible approved costs under itemized schedule shown in
27 **Exhibit "A"** as follows:

28 a. Up to fifty percent (50%) of the HOME Loan at the commencement

1 of construction.

2 b. Up to ninety percent (90%) of the HOME Loan upon fifty-one
3 percent (51%) completion of Project, as certified and documented
4 by the project architect.

5 c. COUNTY shall release final draw down of ten percent (10%) of
6 the HOME Loan following receipt of all of the items listed in
7 **Section 11.**

8 14. **TERMS OF AFFORDABILITY.** The COUNTY HOME-Assisted Units
9 shall remain occupied and rented to Qualified Very Low Income Households for an affordable
10 rent pursuant to **Sections 18 and 19** below, **Exhibit A** and the Covenant Agreement attached
11 hereto as **Exhibit G** until the later of (i) fifty-five (55) years from the recordation of the Notice
12 of Completion in the Official Records for the last building for which construction is completed
13 for the Project, or (ii) July 1, 2073 (“Affordability Period”).

14 15. **INSURANCE.** Without limiting or diminishing BORROWER’S
15 obligation to indemnify or hold COUNTY harmless, BORROWER shall procure and maintain or
16 cause to be maintained, at its sole cost and expense, the following insurance coverage’s during
17 the Term of this Agreement.

18 a. **Builder’s All Risk (Course of Construction) Insurance.**
19 BORROWER shall provide a policy of Builder’s All Risk (Course
20 of Construction) insurance coverage including (if the work is
21 located in an earthquake or flood zone or if required on financed or
22 bond financing arrangements) coverage for earthquake and flood,
23 covering the COUNTY, BORROWER and every subcontractor, of
24 every tier, for the entire Project, including property to be used in
25 the construction of the work while such property is at off-site
26 storage locations or while in transit or temporary off-site storage.
27 Such policy shall include, but not be limited to, coverage for fire,
28 collapse, faulty workmanship, debris removal, expediting expense,

1 fire department service charges, valuable papers and records, trees,
2 grass, shrubbery and plants. If scaffolding, false work and
3 temporary buildings are insured separately by the BORROWER or
4 others, evidence of such separate coverage shall be provided to
5 Authority prior to the start of the work. Such policy shall be written
6 on a completed value form. Such policy shall also provide
7 coverage for temporary structures (on-site offices, etc.), fixtures,
8 machinery and equipment being installed as part of the work.
9 BORROWER shall be responsible for any and all deductibles
10 under such policy. Upon request by COUNTY, BORROWER
11 shall declare all terms, conditions, coverages and limits of such
12 policy. If the Authority so provides, in its sole discretion, the All
13 Risk (Course of Construction) insurance for the Project, then
14 BORROWER shall assume the cost of any and all applicable policy
15 deductibles (currently, \$50,000 per occurrence) and shall insure its
16 own machinery, equipment, tools, etc. from any loss of any nature
17 whatsoever.

18 b. Worker's Compensation Insurance.

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

28 c. Commercial General Liability Insurance.

1 Commercial General Liability insurance coverage, including but
2 not limited to, premises liability, contractual liability, products and
3 completed operations liability, personal and advertising injury, and
4 cross liability coverage, covering claims which may arise from or
5 out of BORROWER'S performance of its obligations hereunder.
6 Policy shall name the County of Riverside, its Agencies, Boards,
7 Districts, Special Districts, and Departments, their respective
8 directors, officers, Board of Supervisors, employees, elected or
9 appointed officials, agents or representatives as Additional Insured.
10 Policy's limit of liability shall not be less than \$1,000,000 per
11 occurrence combined single limit. If such insurance contains a
12 general aggregate limit, it shall apply separately to this agreement
13 or be no less than two (2) times the occurrence limit.

14 d. Vehicle Liability Insurance.

15 If vehicles or mobile equipment are used in the performance of the
16 obligations under this Agreement, then BORROWER shall
17 maintain liability insurance for all owned, non-owned or hired
18 vehicles so used in an amount not less than \$1,000,000 per
19 occurrence combined single limit. If such insurance contains a
20 general aggregate limit, it shall apply separately to this agreement
21 or be no less than two (2) times the occurrence limit. Policy shall
22 name the County of Riverside, its Agencies, Boards, Districts,
23 Special Districts, and Departments, their respective directors,
24 officers, Board of Supervisors, employees, elected or appointed
25 officials, agents or representatives as Additional Insured or provide
26 similar evidence of coverage approved by COUNTY'S Risk
27 Manager.

28 e. General Insurance Provisions – All Lines.

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

8 2) BORROWER's insurance carrier(s) must declare its
9 insurance self-insured retentions. If such self-insured retentions
10 exceed \$500,000 per occurrence such retentions shall have the prior
11 written consent of COUNTY Risk Manager before the
12 commencement of operations under this Agreement. Upon
13 notification of self-insured retention unacceptable to COUNTY,
14 and at the election of COUNTY's Risk Manager, BORROWER's
15 carriers shall either: (a) reduce or eliminate such self-insured
16 retention as respects this Agreement with COUNTY, or (b) procure
17 a bond which guarantees payment of losses and related
18 investigations, claims administration, and defense costs and
19 expenses.

20 3) BORROWER shall cause BORROWER's insurance
21 carrier(s) to furnish the County of Riverside with copies of the
22 Certificate(s) of Insurance and Endorsements effecting coverage as
23 required herein, and 2) if requested to do so orally or in writing by
24 COUNTY Risk Manager, provide copies of policies including all
25 Endorsements and all attachments thereto, showing such insurance
26 is in full force and effect. Further, said Certificate(s) and policies
27 of insurance shall contain the covenant of the insurance carrier(s)
28 that thirty (30) days written notice shall be given to the County of

1 Riverside prior to any material modification, cancellation,
2 expiration or reduction in coverage of such insurance. In the event
3 of a material modification, cancellation, expiration, or reduction in
4 coverage, this Agreement shall terminate forthwith, unless the
5 County of Riverside receives, prior to such effective date, another
6 Certificate of Insurance and copies of endorsements, including all
7 endorsements and attachments thereto evidencing coverage's set
8 forth herein and the insurance required herein is in full force and
9 effect. BORROWER shall not commence operations until
10 COUNTY has been furnished Certificate(s) of Insurance and
11 copies of endorsements and if requested, copies of policies of
12 insurance including all endorsements and any and all other
13 attachments as required in this Section. An individual authorized
14 by the insurance carrier on its behalf shall sign the original
15 endorsements for each policy and the Certificate of Insurance.

16 4) It is understood and agreed to by the parties hereto that
17 BORROWER's insurance shall be construed as primary insurance,
18 and COUNTY's insurance and/or deductibles and/or self-insured
19 retention's or self-insured programs shall not be construed as
20 contributory.

21 5) If, during the term of this Agreement or any extension
22 thereof, there is a material change in the scope of services; or, there
23 is a material change in the equipment to be used in the performance
24 of the scope of work which will add additional exposures (such as
25 the use of aircraft, watercraft, cranes, etc.); or, the term of this
26 Agreement, including any extensions thereof, exceeds five (5)
27 years COUNTY reserves the right to adjust the types of insurance
28 required under this Agreement and the monetary limits of liability

1 for the insurance coverage's currently required herein, if, in
2 COUNTY Risk Manager's reasonable judgment, the amount or
3 type of insurance carried by BORROWER has become inadequate.

4 6) BORROWER shall pass down the insurance obligations
5 contained herein to all tiers of subcontractors working under this
6 Agreement.

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

10 8) BORROWER agrees to notify COUNTY of any claim
11 by a third party or any incident or event that may give rise to a claim
12 arising from the performance of this Agreement.

13 16. FINANCIAL AND PROJECT RECORDS. BORROWER shall maintain
14 financial, programmatic, statistical, and other supporting records of its operations and financial
15 activities in accordance with the requirements of the HOME Program, and the regulations as
16 amended and promulgated thereunder, which records shall be open to inspection and audit by
17 authorized representatives of COUNTY, HUD, and the Comptroller General of the United States
18 during regular working hours. COUNTY, HUD, and the Comptroller General, or any of their
19 representatives, have the right of access with at least forty-eight (48) hours prior notice, to any
20 pertinent books, documents, papers, or other records of BORROWER, in order to make audits,
21 examinations, excerpts, and transcripts. Said records shall be retained for such time as may be
22 required by the regulations of the HOME Program, but in no event no less than five (5) years
23 after the Project completion date as evidenced by recordation of the Notice of Completion;
24 except that records of individual tenant income verifications, project rents, and project
25 inspections must be retained for the most recent five (5) year period, until five (5) years after the
26 Affordability Period terminates. If any litigation, claim, negotiation, audit, or other action has
27 been started before the expiration of the regular period specified, the records must be retained
28 until completion of the action and resolution of all issues which arise from it, or until the end of

1 the regular period, whichever is later.

2 17. COMPLIANCE WITH LAWS AND REGULATIONS. By executing this
3 Agreement, BORROWER hereby certifies that it will adhere to and comply with all federal, state
4 and local laws, regulations and ordinances. In particular, BORROWER shall comply with the
5 following as they may be applicable to BORROWER in connection with the loan of funds
6 granted pursuant to the HOME Program:

7 a. HOME Program and its implementing regulations set forth in
8 pursuant to Title III of Division B of the Housing and Economic
9 Recovery Act of 2008, as amended, Public Law 110-289 ("Act")
10 and Federal Register Notice, Vol. 73, No. 194, Docket No. FR-
11 5255-N-01, dated October 6, 2008, as amended. Since HOME is
12 a component of the Community Development Block Grant
13 (CDBG) Program, the CDBG regulatory structure is the platform
14 used to implement HOME. The regulations created by the Office
15 of the Assistant Secretary of Community Planning and
16 Development that pertain to Community Development programs
17 are contained within 24 CFR part 570 - Community Development
18 Block Grants. HOME is governed by CDBG regulations except
19 where specifically waived.

20 b. Section 92.350 Other Federal requirements and nondiscrimination.
21 As set forth in 24 CFR part 5, sub part A, BORROWER is required
22 to include the following requirements: nondiscrimination and equal
23 opportunity under Section 282 of the Act; disclosure; debarred,
24 suspended, or ineligible contractors; and drug-free workplace.

25 c. Section 92.351 Affirmative marketing and minority outreach
26 program. BORROWER must adopt affirmative marketing
27 procedures and requirements. These must include:

28 (1) Methods for informing the public, owners, and potential

1 tenants about Federal fair housing laws and the affirmative
2 marketing policy (e.g., the use of the Equal Housing
3 Opportunity logotype or slogan in press releases and
4 solicitations for owners, and written communication to fair
5 housing and other groups).

6 (2) Requirements and practices that BORROWER must adhere
7 to in order to carry out the affirmative marketing procedures
8 and requirements (e.g., use of commercial media, use of
9 community contacts, use of the Equal Housing Opportunity
10 logotype or slogan, and display of fair housing poster).

11 (3) Procedures to be used by BORROWER to inform and
12 solicit applications from persons in the housing market area
13 who are not likely to apply without special outreach (e.g.,
14 use of community organizations, employment centers, fair
15 housing groups, or housing counseling agencies).

16 (4) Records that will be kept describing actions taken by
17 BORROWER to affirmatively market units and records to
18 assess the results of these actions.

19 (5) A description of how BORROWER will annually assess the
20 success of affirmative marketing actions and what
21 corrective actions will be taken where affirmative
22 marketing requirements are not met.

23 (6) BORROWER must prescribe procedures to establish and
24 oversee a minority outreach program to ensure the
25 inclusion, to the maximum extent possible, of minorities
26 and women, and entities owned by minorities and women,
27 including, without limitation, real estate firms, construction
28 firms, appraisal firms, management firms, financial

1 institutions, investment banking firms, underwriters,
2 accountants, and providers of legal services, in all contracts
3 entered into by BORROWER with such persons or entities,
4 public and private, in order to facilitate the activities of
5 COUNTY to provide affordable housing authorized under
6 this Act or any other Federal housing law. Section 24 CFR
7 85.36(e) provided affirmative steps to assure that minority
8 business enterprises and women business enterprises are
9 used when possible in the procurement of property and
10 services. The steps include:

- 11 (i) Placing qualified small and minority businesses and
12 women's business enterprises on solicitation lists.
- 13 (ii) Assuring that small and minority businesses, and
14 women's business enterprises are solicited
15 whenever they are potential sources.
- 16 (iii) Dividing total requirements, when economically
17 feasible, into smaller tasks or quantities to permit
18 maximum participation by small and minority
19 business, and women's business enterprises.
- 20 (iv) Establishing delivery schedules, where the
21 requirement permits, which encourage participation
22 by small and minority business, and women's
23 business enterprises.
- 24 (v) Using the services and assistance of the Small
25 Business Administration, and the Minority Business
26 Development Agency of the Department of
27 Commerce.
- 28 (vi) Requiring the prime contractor, if subcontracts are

1 to be let, to take the affirmative steps listed in (i)
2 through (v) above of this section.

3 d. Section 92.352 Environmental review. The environmental effects
4 of each activity carried out with HOME funds must be assessed in
5 accordance with the provisions of the National Environmental
6 Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related
7 authorities listed in HUD's implementing regulations at 24 CFR
8 Parts 50 and 58.

9 e. Section 92.353 Displacement, relocation, and acquisition. The
10 relocation requirements of Title II and the acquisition requirements
11 of Title III of the Uniform Relocation Assistance and Real Property
12 Acquisition Policies Act of 1970, and the implementing regulations
13 at 24 CFR Part 42. BORROWER must ensure that it has taken all
14 reasonable steps to minimize the displacement of persons as a result
15 of this project assisted with HOME Funds.

16 f. Section 92.354 Lead-based paint. Housing assisted with HOME
17 funds is subject to the lead-based paint requirements of 24 CFR
18 Part 35 issued pursuant to the Lead-Based Paint Poisoning
19 Prevention Act (42 U.S.C. 4821, et seq.). The lead-based paint
20 provisions of 24 CFR 982.401 (j), except 24 CFR 982.401 (j)(1)(i),
21 also apply, irrespective of the applicable property standard under
22 §92.251.

23 g. Section 92.354 Labor. Every contract for the construction of
24 housing that includes twelve (12) or more units assisted with
25 HOME funds must contain a provision requiring the payment of
26 not less than the wages prevailing in the locality, as predetermined
27 by the Secretary of Labor pursuant to the Davis-Bacon Act (40
28 U.S.C. 276a-276a-5), to all laborers and mechanics employed in

1 the development of any part of the housing. Such contracts must
2 also be subject to the overtime provisions, as applicable, of the
3 Contract Work Hours and Safety Standards Act (40 U.S.C. 327-
4 332). BORROWER must apply most current wage rate
5 determination at the date of execution of this Agreement.

6 h. Section 92.356 Conflict of Interest. In the procurement of property
7 and services by BORROWER, the conflict of interest provisions in
8 24 CFR 85.36 and 24 CFR 85.42, respectively shall apply. Section
9 92.356 shall cover all cases not governed by 24 CFR 85.36 and 24
10 CFR 84.42.

11 Section 504 of the Rehabilitation Act of 1973; Housing
12 accessibility requirement at 24 CFR Part 8, implementing Section
13 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The design
14 and construction of multi-family dwellings as defined at 24 CFR
15 100.201 must comply with the requirements set forth in 24 CFR
16 100.205 implementing the Fair Housing Act. Dwelling units must
17 be designed and constructed in accordance with the Uniform
18 Federal Accessibility Standards (UFAS) will be deemed to comply
19 with the Section 504 regulation.

20 (1) 24 CFR Part 8.22 New construction—housing
21 facilities. For new construction of multi-family
22 projects, 5 percent (5%) of the units (but not less
23 than one unit) must be accessible to individuals with
24 mobility impairments, and an additional 2 percent
25 (2%) of the units (but not less than one unit) must
26 be accessible to individuals with sensory
27 impairments.

28 (2) 24 CFR Part 8.23 Alterations of existing housing

1 facilities. If alterations are undertaken to a project
2 that has 15 or more units and the cost of the
3 alterations is 75 percent or more of the replacement
4 cost of the completed facility, then the provisions of
5 §8.22 shall apply. Alterations to dwelling units in a
6 multifamily housing project shall, to the maximum
7 extent feasible, be made to be readily accessible to
8 and usable by individuals with handicaps. If
9 alterations of single elements or spaces of a
10 dwelling unit, when considered together, amount to
11 an alteration of a dwelling unit, the entire dwelling
12 unit shall be made accessible. Once 5 percent (5%)
13 of the dwelling units in a project are readily
14 accessible to and usable by individuals with
15 mobility impairments, then no additional elements
16 of dwelling units, or entire dwelling units, are
17 required to be accessible under this paragraph.
18 Alterations to common areas or parts of facilities
19 that affect accessibility of existing housing facilities
20 shall, to the maximum extent feasible, be made to
21 be accessible to and usable by individuals with
22 handicaps. For purposes of this paragraph, the
23 phrase to the maximum extent feasible shall not be
24 interpreted as requiring that a recipient make a
25 dwelling unit, common area, facility or element
26 thereof accessible if doing so would impose undue
27 financial and administrative burdens on the
28 operation of the multifamily housing project.

- 1 j. Model Energy Code published by the Council of American
2 Building Officials.
- 3 k. Section 3 of the Housing and Urban Development Act of 1968. To
4 the greatest extent feasible, opportunities for training and
5 employment arising from HOME funds will be provided to low-
6 income persons residing in the program service area. To the
7 greatest extent feasible, contracts for work to be performed in
8 connection with HOME funds will be awarded to business
9 concerns that are located in or owned by persons residing in the
10 program service area as outlined in the Riverside County EDA
11 Section 3 Contract Requirements attached hereto as **Exhibit D.**
12 Contracts funded from Section 3 covered funding sources must
13 abide by the Section 3 Clause prescribed at 24 CFR 135.38. All
14 contracts subject to the requirements of Section 3 must include the
15 Section 3 Clause verbatim that is contained at 24 CFR 135.38
16 attached hereto as **Exhibit D-2**, which is attached hereto and by this
17 reference incorporated herein.
- 18 l. Section 106 of the National Historic Preservation Act of 1966
19 (NHPA). Consultation with concerned Native American tribes
20 must continue under HUD regulation 24 CFR Part 50 and 58, and
21 Section 106 of the National Historic Preservation Act and its
22 implementing regulations 36 CFR Part 800 for possible impacts on
23 historic properties. Historic properties include archeological sites,
24 burial grounds, sacred landscapes or features, ceremonial areas,
25 traditional cultural places and landscapes, plant and animal
26 communities, and buildings and structures with significant tribal
27 association.
- 28 m. Section 92.358 Consultant Activities. No person providing

1 consultant services in an employer-employee type relationship
2 shall receive more than a reasonable rate of compensation for
3 personal services paid with HOME funds.

4 n. BORROWER shall carry out its activity pursuant to this
5 Agreement in compliance with all federal laws and regulations
6 described in Subpart E of Part 92 of the Code of Federal
7 Regulations, except that:

8 (1) BORROWER does not assume COUNTY'S environmental
9 responsibilities described at 24 CFR Part 92.352; and

10 (2) BORROWER does not assume COUNTY's responsibility
11 for initiating the review process under the provisions of 24
12 CFR Part 92.352

13 o. Uniform Administrative Requirements of 24 CFR 92.505 and 24
14 CFR Part 200 as now in effect and as may be amended from time
15 to time. Federal awards expended as a recipient or a subrecipient,
16 as defined by HUD, would be subject to single audit. The payments
17 received for goods or services provided as a vendor would not be
18 considered Federal awards.

19 p. BORROWER shall include written agreements that include all
20 provisions of **Section 17** if BORROWER provides HOME funds
21 to for-profit owners or developers, non-profit owners or
22 developers, sub-recipients, homeowners, homebuyers, tenants
23 receiving tenant-based rental assistance, or contractors.

24 q. Immigration requirements of Federal Register, Vol. 62, No. 221,
25 Department of Justice Interim Guidance on Verification of
26 Citizenship, Qualified Alien Status and Eligibility Under Title IV
27 of the Personal Responsibility and Work Opportunity
28 Reconciliation Act of 1996 ("PRWORA"). Final Attorney

1 General's Order issued pursuant to PRWORA is specified under
2 Federal Register Vol. 66, No. 10, Department of Justice Final
3 Specification of Community Programs Necessary for Protection of
4 Life or Safety Under Welfare Reform Legislation.

5 r. BORROWER shall comply with all applicable local, state and
6 federal laws in addition to the above mentioned laws.

7 18. INCOME TARGETING REQUIREMENTS. BORROWER shall set aside
8 eleven (11) units to be designated as HOME-Assisted Units which shall be occupied and rented
9 to households whose incomes do not exceed fifty percent (50%) of the area median income for
10 the County of Riverside ("Qualified Very Low Income Households"), adjusted by family size at
11 the time of occupancy as published by HUD.

12 19. RENT LIMITATIONS. BORROWER shall comply with the rent
13 limitations set forth under 24 CFR 92.252 of the HOME Investment Partnerships Act and HOME
14 Investment Partnerships ("HOME") program, which was enacted under Title II of the Cranston-
15 Gonzalez National Affordable Housing Act (the "Act"), as amended (commencing at 42 U.S.C.
16 12701 et seq.), and the implementing regulations thereto (24 CFR Part 92) (collectively, the
17 "HOME Program"). A total of 11 units consisting of 3 three-bedrooms and 8 four-bedrooms,
18 shall be reserved as HOME-Assisted Units and rented at Low HOME rent levels as published by
19 HUD. The HOME-Assisted Units shall be a "floating" designation on the Property such that the
20 requirements of this Agreement will be satisfied so long as the total number of HOME-Assisted
21 Units and bedroom size remains the same throughout the Affordability Period. COUNTY shall
22 review and approve proposed rents to the extent required under this section. BORROWER shall
23 ensure the HOME-Assisted Units are rented to qualified Very Low Income Households at the
24 Low HOME rent levels required herein. The maximum monthly allowances for utilities and
25 services (excluding telephone) shall not exceed the utility allowance as described below. The
26 BORROWER shall also cause the 11 HOME-Assisted Units to comply with the requirements of
27 the USDA 514 Farm Labor Housing program in all respects.

28 a. Utility Allowance: The California Utility Allowance Calculator

1 (CUAC) is California's energy consumption model for calculating utility estimates (Treasury
2 Regulation 26 CFR §1.42-10). The BORROWER shall use the California Utility Allowance
3 Calculator (CUAC) to establish maximum monthly allowances for utilities and services to be
4 used by the BORROWER in calculating rents conditioned upon approval by the California Tax
5 Credit Allocation Committee (CTCAC) for Low Income Housing Tax Credit Projects.
6 Notwithstanding the foregoing, COUNTY agrees that BORROWER may use the Energy
7 Efficient Utility Allowance established by the Housing Authority of the County of Riverside.

8 b. Initial Occupancy of Vacant Units: All eleven (11) HOME-
9 Assisted Units consisting of 3 three-bedrooms and 8 four-bedrooms shall be occupied by and
10 rented to Qualified Very Low Income Households for an affordable rent within six (6) months
11 from the recordation of the Notice of Completion in the Official Records ("Lease Deadline") for
12 the last building constructed as part of the Project. If a COUNTY HOME-Assisted Unit remains
13 unoccupied or not leased to an eligible tenant, BORROWER must provide to COUNTY
14 information about current marketing efforts and an enhanced plan for marketing the unit so that
15 it is leased promptly.

16 Within twelve (12) months from the Lease Deadline, if a HOME-
17 Assisted Unit remains unoccupied or not leased to an eligible tenant, then
18 BORROWER agrees to repay HOME funds for any HOME-Assisted Unit that is
19 not rented to eligible tenants. BORROWER may request an extension of the Lease Deadline
20 from COUNTY if BORROWER can provide to COUNTY evidence showing efforts of
21 aggressive marketing efforts and proof that the circumstances that led to the failure to lease the
22 HOME-Assisted Unit(s) by the Lease Deadline were beyond the BORROWER's control. The
23 extension and time of extension is subject to COUNTY's approval and not guaranteed. The
24 Assistant County Executive Officer/EDA, or designee, has the authority, at his or her discretion,
25 to consent to an extension of the Lease Deadline.

26 The amount of HOME funds to be repaid is based on the HOME Loan, defined in
27 **Section 1**, prorated by the number of COUNTY HOME-Assisted Units that are or are not rented
28 to eligible tenants. If all COUNTY HOME-Assisted Units are not rented to eligible tenants, then



1 COUNTY and BORROWER mutually agree that this Agreement will self-terminate and any
2 HOME Loan funds drawn shall be returned within thirty (30) calendar days. Upon such
3 termination, this Agreement shall become null and void. COUNTY and BORROWER shall be
4 released and discharged respectively from their obligations under this Agreement. All cost
5 incurred by each party on the Project will be assumed respectively.

6 a. HOME Rent Limitations: Effective April 13, 2016, HUD
7 published HOME Rent Limits for the County of Riverside. In order to calculate net rent to be
8 charged, an applicable utility allowance must be subtracted from the gross rents listed. The
9 BORROWER shall use the HUD Utility Schedule Model ("HUSM") to establish maximum
10 monthly allowances for utilities and services to be used by the BORROWER in calculating
11 Rents. The HUSM and use instructions can be found at:

12 <https://www.huduser.gov/portal/resources/utilallowance.html>.

13 c. Approval: The BORROWER shall submit to the COUNTY for
14 review and written approval, all proposed rents for the HOME-Assisted Units prior to lease-up.
15 Low HOME rent limitations for COUNTY HOME-Assisted units shall be as set forth under 24
16 CFR 92.252 and such units shall be rented and occupied by income qualified applicants at the
17 HOME rent levels for the County of Riverside, which are published periodically by HUD. If
18 during the re-certification process a household income falls between 51% and 60% Area Median
19 Income then the High HOME rent limit shall apply. If during the recertification process a
20 household income falls above 80% of the Area Median Income then household shall pay the
21 lesser of 30% of the adjusted income or Market rent.

22 20. TENANT PROTECTIONS. During the Affordability Period,
23 BORROWER shall adhere to the tenant protections and selection standard set forth in 24 CFR
24 92.253, as may be amended from time to time, and the following requirements:

25 a. Provide written lease agreement for not less than one year, unless by
26 mutual agreement between the tenant and BORROWER. COUNTY
27 shall review the initial form of the lease agreement prior to
28 BORROWER executing any leases and, provided that BORROWER

1 uses the approved lease form, BORROWER shall be permitted to enter
2 into residential leases without COUNTY's prior written consent.

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

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

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

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

21 (4) Waiver of notice. Agreement of the tenant that
22 BORROWER may institute a lawsuit without notice to the
23 tenant.

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

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

3 (7) Waiver of right to appeal court decision. Agreement by the
4 tenant to waive the tenant's right to appeal, or to otherwise
5 challenge in court, a court decision in connection with the
6 lease.

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

12 (9) Mandatory supportive services. Agreement by the tenant
13 (other than a tenant in transitional housing) to accept
14 supportive services that are offered.

15 c. Violence Against Women Reauthorization Act of 2013. (Pub. L. 113-
16 4, 127 Stat. 54) ("VAWA 2013"). VAWA 2013 reauthorizes and
17 amends the Violence Against Women Act of 1994, as previously
18 amended, (title IV, sec. 40001-40703 of Pub. L. 103-322, 42 U.S.C.
19 13925 et seq.) VAWA 2013, among other things, bars eviction and
20 termination due to a tenant's status as a victim of domestic violence,
21 dating violence, or stalking, and requires landlords to maintain
22 survivor-tenant confidentiality. VAWA 2013 prohibits a tenant who
23 is a survivor of domestic violence, dating violence, sexual assault, and
24 stalking from being denied assistance, tenancy, or occupancy rights
25 based solely on criminal activity related to an act of violence
26 committed against them. It extends housing protections to survivors
27 of sexual assault, and adds "intimate partner" to the list of eligible
28 relationships in the domestic violence definition. Protections also now

1 cover an “affiliated individual,” which includes any lawful occupant
2 living in the survivor’s household, or related to the survivor by blood
3 or marriage including the survivor’s spouse, parent, brother, sister,
4 child, or any person to whom the survivor stands in loco parentis.
5 VAWA 2013 allows a lease bifurcation so a tenant or lawful occupant
6 who engages in criminal activity directly relating to domestic
7 violence, dating violence, sexual assault, or stalking against an
8 affiliated individual or other individual, or others may be evicted or
9 removed without evicting or removing or otherwise penalizing a
10 victim who is a tenant or lawful occupant. If victim cannot establish
11 eligibility, BORROWER must give a reasonable amount of time to
12 find new housing or establish eligibility under another covered
13 housing program. A Notice of Rights under VAWA 2013 for tenants
14 must be provided at the time a person applies for housing, when a
15 person is admitted as a tenant of a housing unit, and when a tenant is
16 threatened with eviction or termination of housing benefits. Tenants
17 must request an emergency transfer and reasonably believe that they
18 are threatened with imminent harm from further violence if the tenant
19 remains in the same unit. The provisions of VAWA 2013 that are
20 applicable to HUD programs are found in title VI of VAWA 2013,
21 which is entitled “Safe Homes for Victims of Domestic Violence,
22 Dating Violence, Sexual Assault, and Stalking.” Section 601 of
23 VAWA 2013 amends subtitle N of VAWA (42 U.S.C. 14043e et seq.)
24 to add a new chapter entitled “Housing Rights.”

25 21. FEDERAL REQUIREMENTS. BORROWER shall comply with the
26 provisions of the HOME Program and any amendments thereto and all applicable federal
27 regulations and guidelines now or hereafter enacted pursuant to the Act.

28 22. SALE, ASSIGNMENT OR OTHER TRANSFER OF THE PROJECT.

1 BORROWER hereby covenants and agrees not to sell, assign, transfer or otherwise dispose of
2 the Project or any portion thereof, without obtaining the prior written consent of the COUNTY,
3 which consent shall be conditioned upon (a) a County determination that transferee is a CHDO
4 or is otherwise eligible as a wholly-owned subsidiary or partnership of a CHDO and determined
5 by County to be HUD-eligible to receive an allocation of CHDO HOME Set Aside funds
6 pursuant to the requirements set forth in 24 CFR 92.300(a); and (b) solely upon (a) receipt by
7 the COUNTY of reasonable evidence satisfactory to the COUNTY in its sole discretion, that
8 transferee has assumed in writing and in full, and is reasonably capable of performing and
9 complying with the BORROWER's duties and obligations under this Agreement, provided,
10 however Borrower shall not be released of all obligations hereunder which accrue from and after
11 the date of such sale. Notwithstanding anything to the contrary contained herein, upon written
12 notice to COUNTY, BORROWER may (i) admit limited partners to BORROWER, and provide
13 for the purchase of any such limited partnership interest or interests by BORROWER's general
14 partner; (ii) remove BORROWER's general partner, and replace with an affiliate of the
15 BORROWER's limited partner, provided that any replacement general partner for BORROWER
16 who is not an affiliate with the BORROWER's limited partner will require the written consent
17 of COUNTY, which consent will not be unreasonably withheld; (iii) the lease for occupancy of
18 all or any of the HOME-Assisted Units; (iv) the granting of easements or permits to facilitate the
19 development of the Property in accordance with this Agreement; and (v) the withdrawal and/or
20 replacement of any limited partner of BORROWER, (collectively a "Permitted Transfer"). All
21 Permitted Transfers shall be subject to reasonable review of documentation by the COUNTY.
22 The parties hereto acknowledge that "affiliate" for purposes of this section means, as to any
23 Person (as defined below), any general partnership, limited partnership, corporation, joint
24 venture, trust, business trust, cooperative, association, limited liability company or individual
25 (collectively, a "Person") that (A) directly or indirectly controls or is controlled by (such as any
26 partnership or limited liability company in which the Person, directly or indirectly, serves as a
27 general partner or managing member, respectively) or is under common control with the
28 specified Person; (B) is an officer or director of, commissioner of, partner in, member of or

1 trustee of, or serves in a similar capacity with respect to, the specified Person or of which the
2 Specified Person is an officer, director, member, partner or trustee, or with respect to which the
3 specified Person serves in a similar capacity; or (C) is the beneficial owner, directly or indirectly,
4 of 10% or more of any class of equity securities of the specified Person or of which the specified
5 Person is directly or indirectly the owner of 10% or more of any class of equity securities. The
6 term "control" (including the term "controlled by" and "under common control with") means the
7 possession, direct or indirect, of the power to direct or cause the direction of the management
8 and policies of a Person, whether through the ownership of voting securities, by contract or
9 otherwise.

10 23. INDEPENDENT CONTRACTOR. BORROWER and its agents, servants
11 and employees shall act at all times in an independent capacity during the term of this Agreement,
12 and shall not act as, shall not be, nor shall they in any manner be construed to be agents, officers,
13 or employees of COUNTY.

14 24. NONDISCRIMINATION. Borrower shall abide by 24 CFR 570.602
15 which requires that no person in the United States shall on the grounds of race, color, national
16 origin, religion, or sex be excluded from participation in, be denied the benefits of, or be
17 subjected to discrimination under any program or activity receiving Federal financial assistance
18 made available pursuant to the Act. Under the Act, Section 109 directs that the prohibitions
19 against discrimination on the basis of age under the Age Discrimination Act and the prohibitions
20 against discrimination on the basis of disability under Section 504 shall apply to programs or
21 activities receiving Federal financial assistance under Title I programs. The policies and
22 procedures necessary to ensure enforcement of Section 109 are codified in 24 CFR Part 6. In
23 addition, BORROWER shall not discriminate on the basis of race, gender, religion, national
24 origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or
25 treatment of any contractors or consultants, to participate in subcontracting/subconsulting
26 opportunities. BORROWER understands and agrees that violation of this clause shall be
27 considered a material breach of this Lease and may result in termination, debarment or other
28 sanctions. This language shall be incorporated into all contracts between BORROWER and any

1 contractor, consultant, subcontractor, subconsultants, vendors and suppliers. BORROWER shall
2 comply with the provisions of the California Fair Employment and Housing Act (Government
3 Code Sections 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended,
4 and all Administrative Rules and Regulations issued pursuant to said Acts and Orders with
5 respect to its use of the Property.

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

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

- 22 a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs,
23 executors, administrators, and assigns, and all persons claiming under or through them, that
24 there shall be no discrimination against or segregation of, any person or group of persons
25 on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government
26 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
27 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government
28 Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the

1 premises herein conveyed, nor shall the grantee or any person claiming under or through
2 him or her, establish or permit any practice or practices of discrimination or segregation
3 with reference to the selection, location, number, use or occupancy of tenants, lessees,
4 subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing
5 covenants shall run with the land.”

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

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

27 In addition to the obligations and duties of BORROWER set forth herein, BORROWER
28 shall, upon notice from County, promptly pay to County all fees and costs, including administrative

1 and attorneys' fees, incurred by County in connection with responding to or defending any
2 discrimination claim brought by any third party and/or local, state or federal government entity,
3 arising out of or in connection with this Agreement or the Covenant Agreement attached hereto.

4 25. PROHIBITION AGAINST CONFLICTS OF INTEREST:

- 5 a. BORROWER and its assigns, employees, agents, consultants, officers
6 and elected and appointed officials shall become familiar with and shall
7 comply with the conflict of interest provisions in OMB Circular A-110,
8 24 CFR 85.36, 24 CFR 84.42, 24 CFR 92.356 and Policy Manual #A-
9 11, attached hereto as **Exhibit E** and by this reference incorporated
10 herein.
- 11 b. BORROWER understands and agrees that no waiver or exception can
12 be granted to the prohibition against conflict of interest except upon
13 written approval of HUD pursuant to 24 CFR 92.356(d). Any request
14 by BORROWER for an exception shall first be reviewed by COUNTY
15 to determine whether such request is appropriate for submission to
16 HUD. In determining whether such request is appropriate for
17 submission to HUD, COUNTY will consider the factors listed in 24
18 CFR 92.356(e).
- 19 c. Prior to any funding under this Agreement, BORROWER shall provide
20 COUNTY with a list of all employees, agents, consultants, officers and
21 elected and appointed officials who are in a position to participate in a
22 decision-making process, exercise any functions or responsibilities, or
23 gain inside information with respect to the HOME activities funded
24 under this Agreement. BORROWER shall also promptly disclose to
25 COUNTY any potential conflict, including even the appearance of
26 conflict that may arise with respect to the HOME activities funded
27 under this Agreement.
- 28 d. Any violation of this section shall be deemed a material breach of this

1 Agreement, and the Agreement shall be immediately terminated by
2 COUNTY.

3 26. RELIGIOUS ACTIVITIES. Under federal regulations, 24 CFR 92.257
4 HOME funds may not be provided to primarily religious organizations, such as churches, for
5 any activity including secular activities. In addition, HOME funds may not be used to
6 rehabilitate or construct housing owned by primarily religious organizations or to assist primarily
7 religious organizations in acquiring housing. However, HOME funds may be used by a secular
8 entity to acquire housing from a primarily religious organization, and a primarily religious entity
9 may transfer title to property to a wholly secular entity and the entity may participate in the
10 HOME program in accordance with the requirements set forth at 24 CFR 92.257. The entity
11 may be an existing or newly established entity, which may be an entity established by the
12 religious organization. The completed housing project must be used exclusively by the
13 BORROWER/participant entity for secular purposes, available to all persons regardless of
14 religion. In particular, there must be no religious or membership criteria for tenants of the
15 property.

16 27. PROJECT MONITORING AND EVALUATION.

17 a. Tenant Checklist. BORROWER shall submit a Tenant Checklist Form
18 to COUNTY, as shown in **Exhibit F** which is attached hereto and by this reference is
19 incorporated herein and may be revised by COUNTY, summarizing the racial/ethnic
20 composition, number and percentage of very low-income and low-income households who are
21 tenants of the COUNTY HOME-Assisted Units. The Tenant Checklist Form shall be submitted
22 upon completion of the construction and thereafter, on a semi-annual basis on or before March
23 31st and September 30th. BORROWER shall maintain financial, programmatic, statistical and
24 other supporting records of its operations and financial activities in accordance with the
25 requirements of the HOME Program under 24 CFR 92.508, including the submission of Tenant
26 Checklist Form. Except as otherwise provided for in this Agreement, BORROWER shall
27 maintain and submit records to COUNTY within ten business days of COUNTY's request which
28 clearly documents BORROWER's performance under each requirement of the HOME Program.

1 A list of document submissions and timeline are shown in **Exhibit A** and such list may be
2 amended from time to time subject to HUD and COUNTY reporting requirements.

3 b. Inspections. Pursuant to 24 CFR 92.504(d)(ii), during the Affordability
4 Period, COUNTY must perform on-site inspections of COUNTY HOME-assisted rental housing
5 to determine compliance with the property standards of §92.251 and to verify the information
6 submitted by the owners in accordance with the requirements of §92.252. The inspections must
7 be in accordance with the inspection procedures that the participating jurisdiction establishes to
8 meet the inspection requirements of §92.251. The on-site inspections must occur within 12
9 months after Notice of Completion and at least once every 3 years thereafter during the
10 Affordability Period. If there are observed deficiencies for any of the inspectable items in the
11 property standards established by COUNTY, in accordance with the inspection requirements of
12 §92.251, a follow-up on-site inspection to verify that deficiencies are corrected must occur
13 within 12 months. COUNTY may establish a list of non-hazardous deficiencies for which
14 correction can be verified by third party documentation (e.g., paid invoice for work order) rather
15 than re-inspection. Health and safety deficiencies must be corrected immediately, in accordance
16 with §92.251. COUNTY must adopt a more frequent inspection schedule for properties that have
17 been found to have health and safety deficiencies. The property owner must annually certify to
18 the COUNTY that each building and all HOME- assisted units in the project are suitable for
19 occupancy, taking into account State and local health, safety, and other applicable codes,
20 ordinances, and requirements, and the ongoing property standards established by the
21 participating jurisdiction to meet the requirements of §92.251. Inspections must be based on a
22 statistically valid sample of units appropriate for the size of the COUNTY HOME-Assisted
23 project, as set forth by HUD through notice. For projects with one-to-four COUNTY HOME-
24 Assisted Units, COUNTY must inspect 100 percent of the COUNTY HOME-Assisted Units and
25 the inspectable items (site, building exterior, building systems, and common areas) for each
26 building housing COUNTY HOME-assisted units.

27 c. Income Certification. The income of a tenant must be determined
28 initially and each sixth year of affordability in accordance with 24 CFR 92.203 (a)(1)(i). In

1 addition, annually between each sixth year of affordability BORROWER must re-examine each
2 tenants annual income under 24 CFR 92.203 (a) (1) (ii).

3 28. MONITORING FEE. Provided that BORROWER pays the COUNTY a
4 monitoring fee in the amount of Six Thousand Eight Hundred Dollars (\$6,800) ("Monitoring
5 Fee"), in connection with the monitoring of the Project as it relates to the County NSP Loan,
6 BORROWER shall not be required to pay the COUNTY an additional monitoring fee hereunder.
7 In the event BORROWER is no longer required to pay the aforementioned Monitoring Fee to
8 the COUNTY in connection with the County NSP1 Loan, BORROWER shall be required to pay
9 to the COUNTY an annual compliance monitoring fee in the annual amount of \$6,800, increased
10 annually by an amount equal to the increase of the Consumer Price Index (CPI), for the Los-
11 Angeles-Orange County-Riverside, CA area; provided however, that in the event of a decrease
12 in the CPI, the County's annual Monitoring Fee shall remain the same as the immediate
13 preceding year. The first Monitoring Fee is due on July 1st of each year for the monitoring period
14 of July 1st to June 30th commencing July 1, 2019. The Monitoring Fee will be due on July 1st
15 thereafter and will continue until the expiration of the Affordability Period. .

16 29. ACCESS TO PROJECT SITE. COUNTY and HUD shall have the right
17 to access the Project site and the Property at all reasonable times, and upon completion of the
18 Project upon reasonable written notice to BORROWER, to review the operation of the Project
19 in accordance with this Agreement.

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

- 22 a. Monetary Default. (1) BORROWER's failure to pay when due any
23 sums payable under this Agreement, the Covenant Agreement, the
24 HOME Note or any advances made by COUNTY under this
25 Agreement; (2) BORROWER's or any agent of BORROWER's
26 use of HOME funds for costs other than those costs permitted under
27 this Agreement or for uses inconsistent with terms and restrictions
28 set forth in this Agreement; (3) BORROWER's or any agent of

1 BORROWER's failure to make any other payment of any
2 assessment or tax due under this Agreement, and /or (4) default
3 under the terms of any Senior Loan documents or any other
4 instrument or document secured against the Property;

5 b. Non-Monetary Default. (1) Discrimination by BORROWER or
6 BORROWER's agent(s) on the basis of characteristics prohibited
7 by this Agreement or applicable law; (2) the imposition of any
8 encumbrances or liens on the Project without COUNTY's prior
9 written approval that are prohibited under this Agreement or that
10 have the effect of reducing the priority or invalidating the lien of
11 the HOME Deed of Trust; (3) BORROWER's failure to obtain and
12 maintain the insurance coverage required under this Agreement; (4)
13 any material default under this Agreement, the HOME Loan Deed
14 of Trust, Covenant Agreement, HOME Note or any document
15 executed by the County in connection with this Agreement, and /or
16 (5) a default under the terms of any Senior Loan documents or any
17 other instrument or document secured against the Property or the
18 Project;

19 c. General Performance of Loan Obligations. Any substantial or
20 continuous or repeated breach by BORROWER or BORROWER's
21 agents of any material obligations of BORROWER under this
22 Agreement;

23 d. General Performance of Other Obligations. Any substantial or
24 continuous or repeated breach by BORROWER or BORROWER's
25 agents of any material obligations of BORROWER related to the
26 Project imposed by any other agreement with respect to the
27 financing, development, or operation of the Project; whether or not
28 COUNTY is a party to such agreement; but only following any

1 applicable notice and cure periods with respect to any such
2 obligation;

3 e. Representations and Warranties. A determination by COUNTY
4 that any of BORROWER's representations or warranties made in
5 this Agreement, any statements made to COUNTY by
6 BORROWER, or any certificates, documents, or schedules
7 supplied to COUNTY by BORROWER were false in any material
8 respect when made, or that BORROWER concealed or failed to
9 disclose a material fact to COUNTY.

10 f. Damage to Project. In the event that the Project is materially
11 ~~damaged or destroyed~~ by fire or other casualty, and BORROWER
12 receives an award or insurance proceeds sufficient for the repair or
13 reconstruction of the Project, and BORROWER does not use such
14 award or proceeds to repair or reconstruct the Project.

15 g. Bankruptcy, Dissolution and Insolvency. BORROWER's or
16 general partner and co-general partner of BORROWER's (1) filing
17 for bankruptcy, dissolution, or reorganization, or failure to obtain a
18 full dismissal of any such involuntary filing brought by another
19 party before the earlier of final relief or ninety (90) days after such
20 filing; (2) making a general assignment for the benefit of creditors;
21 (3) applying for the appointment of a receiver, trustee, custodian,
22 or liquidator, or failure to obtain a full dismissal of any such
23 involuntary application brought by another party before the earlier
24 of final relief or ninety (90) days after such filing; (4) insolvency;
25 or (5) failure, inability or admission in writing of its inability to pay
26 its debts as they become due.

27 31. NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. Formal
28 notices, demands and communications between the COUNTY and the BORROWER shall be

1 sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt
2 requested, to the principal offices of the COUNTY and the BORROWER, as designated below.
3 Such written notices, demands and communications may be sent in the same manner to such
4 other addresses as either party may from time to time designate by mail as provided in this
5 **Section 31.** Any notice that is transmitted by electronic facsimile transmission followed by
6 delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is
7 personally delivered (including by means of professional messenger service, courier service
8 such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed
9 received on the documented date of receipt by the recipient; and any notice that is sent by
10 registered or certified mail, postage prepaid, return receipt required shall be deemed received
11 on the date of delivery thereof.

12 a. Subject to the Force Majeure Delay, as provided in this Section 9, failure
13 or delay by BORROWER to perform any term or provision of this Agreement constitutes a
14 default under this Agreement. BORROWER must immediately commence to cure, correct or
15 remedy such failure or delay and shall complete such cure, correction or remedy with reasonable
16 diligence.

17 b. COUNTY shall give written notice of default to BORROWER, specifying
18 the default complained of by COUNTY. Failure or delay in giving such notice shall not
19 constitute a waiver of any default, nor shall it change the time of default. Except as otherwise
20 expressly provided in this Agreement, any failures or delays by COUNTY in asserting any of
21 its rights and remedies as to any default shall not operate as a waiver of any default or of any
22 such rights or remedies. Delays by COUNTY in asserting any of its rights and remedies shall
23 not deprive COUNTY of its right to institute and maintain any actions or proceedings which it
24 may deem necessary to protect, assert or enforce any such rights or remedies.

25 c. If a monetary event of default occurs, prior to exercising any remedies
26 hereunder, COUNTY shall give BORROWER written notice of such default. BORROWER
27 shall have a period of ten (10) days after such notice is given within which to cure the default
28 prior to exercise of remedies by COUNTY.

1 d. If a non-monetary event of default occurs, prior to exercising any remedies
2 hereunder, COUNTY shall give BORROWER written notice of such default. If the default is
3 reasonably capable of being cured within thirty (30) days, BORROWER shall have such period
4 to effect a cure prior to exercise of remedies by COUNTY. If the default is such that it is not
5 reasonably capable of being cured within thirty (30) days, and BORROWER (i) initiates
6 corrective action within said period, and (ii) diligently, continually, and in good faith works to
7 effect a cure as soon as possible, then BORROWER shall have such additional time as is
8 reasonably necessary to cure the default prior to exercise of any remedies by the injured party,
9 but in no event no more than sixty (60) days from the date of the notice of default. In no event
10 shall COUNTY be precluded from exercising remedies if its security becomes or is about to
11 become materially jeopardized by any failure to cure a default or the default is not cured within
12 sixty (60) days after the first notice of default is given.

13 e. Any cure tendered by Borrower's limited partner shall be accepted or
14 rejected on the same basis as if tendered by Borrower.

15 32. COUNTY REMEDIES. Upon the occurrence of an Event of Default, after
16 notice and opportunity to cure, COUNTY's obligation to disburse HOME funds shall terminate,
17 and COUNTY shall also have the right, but not the obligation to, in addition to other rights and
18 remedies permitted by this Agreement or applicable law, proceed with any or all of the
19 following remedies in any order or combination COUNTY may choose in its sole discretion:

20 a. Terminate this Agreement, in which event the entire HOME Loan
21 amount as well as any other monies advanced to BORROWER by
22 COUNTY under this Agreement including administrative costs,
23 shall immediately become due and payable to COUNTY at the
24 option of COUNTY.

25 b. Bring an action in equitable relief (1) seeking the specific
26 performance by BORROWER of the terms and conditions of this
27 Agreement, and/or (2) enjoining, abating, or preventing any
28 violation of said terms and conditions, and/or (3) seeking

1 declaratory relief.

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

6 d. Enter the Project and take any remedial actions necessary in its
7 judgment with respect to hazardous materials that COUNTY deems
8 necessary to comply with hazardous materials laws or to render the
9 Project suitable for occupancy, which costs shall be due and payable
10 by BORROWER to COUNTY.

11 e. Enter upon, take possession of, and manage the Project, either in
12 person, by agent, or by a receiver appointed by a court, and collect
13 rents and other amounts specified in the assignment of rents in the
14 Deed of Trust and apply them to operate the Project or to pay off the
15 HOME Loan or any advances made under this Agreement, as
16 provided for by the HOME Deed of Trust.

17 f. Pursue any other remedies allowed at law or in equity.

18 33. RESERVED.

19 34. BORROWER'S WARRANTIES. BORROWER represents and warrants

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

1 35. BORROWER'S CERTIFICATION. BORROWER certifies, to the best of
2 its knowledge and belief, that:

- 3 a. No federally appropriated funds have been paid or will be paid, by or on
4 behalf of the undersigned, to any person for influencing or attempting
5 to influence an officer or employee of any agency, a member of
6 Congress, an officer or employee of Congress, or an employee of a
7 member of Congress in connection with the awarding of any federal
8 contract, the making of any federal grant, the making of any federal
9 loan, the entering into of any cooperative agreement, and the extension,
10 continuation, review, amendment, or modification of any federal
11 contract, grant, loan, or cooperative agreement.
- 12 b. If any funds other than federally appropriated funds have been paid or
13 will be paid to any person for influencing or attempting to influence an
14 officer or employee of any agency, a member of Congress, an officer or
15 employee of Congress, or an employee of a member of Congress in
16 connection with this federal contract, grant, loan, or cooperative
17 agreement, the undersigned shall complete and submit Standard Form-
18 LLL, "Disclosure Form to Report Lobbying," in accordance with its
19 instructions.
- 20 c. The undersigned shall require that the language of this certification be
21 included in the award documents for all sub-awards at all tiers
22 (including subcontracts, sub-grants, and contracts under grants, loans,
23 and cooperative agreements) and that BORROWER shall certify and
24 disclose accordingly. This certification is a material representation of
25 fact upon which reliance was placed when this transaction was made or
26 entered into.

27 36. HOLD HARMLESS AND INDEMNIFICATION. BORROWER shall
28 indemnify and hold harmless the County of Riverside, its Agencies, Boards, Districts, Special

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

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

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

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

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

28 BORROWER's obligations set forth in this **Section 36** shall survive the expiration or

1 earlier termination of this Agreement.

2 37. TERMINATION.

3 a. BORROWER. BORROWER may terminate this Agreement prior to
4 disbursement of any HOME Loan funds by COUNTY in accordance with the applicable HOME
5 Program regulations.

6 b. COUNTY. Notwithstanding the provisions of **Section 37(a)**, COUNTY
7 may suspend or terminate this Agreement upon written notice to BORROWER of the action being
8 taken and the reason for such action in the event one of the following events occur:

9 (1) In the event BORROWER fails to perform the covenants
10 herein contained at such times and in such manner as
11 provided in this Agreement after the applicable notice and
12 cure provision hereof; or

13 (2) In the event there is a conflict with any federal, state or local
14 law, ordinance, regulation or rule rendering any material
15 provision, in the judgment of COUNTY of this Agreement
16 invalid or untenable; or

17 (3) In the event the HOME funding from HUD identified in
18 **Section 1** above is terminated or otherwise becomes
19 unavailable.

20 c. This Agreement may be terminated or funding suspended in whole or in
21 part for cause. Cause shall be based on the failure of BORROWER to materially comply with
22 either the terms or conditions of this Agreement after the expiration of all applicable notice and
23 cure provisions hereof. Upon suspension of funding, BORROWER agrees not to incur any costs
24 related thereto, or connected with, any area of conflict from which COUNTY has determined that
25 suspension of funds is necessary. The HOME Loan may be terminated for convenience.

26 d. Upon expiration or earlier termination of this Agreement, BORROWER
27 shall transfer to COUNTY any unexpended HOME funds in its possession at the time of expiration
28 of the Agreement as well as any accounts receivable held by BORROWER which are attributable