

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**
Redevelopment Agency of the
City of Desert Hot Springs
65950 Pierson Blvd.
Desert Hot Springs, CA 92240
Attn: Executive Director

Project: Neighborhood Renewal
APN 639-182-040
EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE §§6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S OFFICE USE ONLY

AMENDED AND RESTATED AGREEMENT AND COVENANTS,
CONDITIONS AND RESTRICTIONS
AFFECTING REAL PROPERTY

THIS AMENDED AND RESTATED AGREEMENT AND COVENANTS, CONDITIONS AND RESTRICTIONS AFFECTING REAL PROPERTY ("Agreement") is entered into this _____ day of September, 2014 by and between the Successor Agency of the Redevelopment Agency of the City of Desert Hot Springs ("Successor Agency"), a public body, corporate and politic, and Margaret Ann Block, an individual ("Owner"), with reference to the following facts:

RECITALS

WHEREAS, in 2010, the Redevelopment Agency of the City of Desert Hot Springs ("Agency") approved and implemented a Neighborhood Renewal Program (the "NRP") for the purpose of providing financial assistance in the form of housing rehabilitation grants ("Grants") to very low-, low- and moderate-income households within the City of Desert Hot Springs (the "City"); and

WHEREAS, the Grants were to be funded with money from the Agency's low and moderate income housing set aside fund as described in Health and Safety Code Section 33334.2 (the "Fund"); and

WHEREAS, the City Council and the Agency Board consented to such use of the Fund both within and without the Desert Hot Springs Redevelopment Project Area (the "Project Area"); and

WHEREAS, the Grants are consistent with the goals and objectives of the Redevelopment Plan and the Implementation Plan for the Project Area and with the intent of Community Redevelopment Law as set forth in Health and Safety Code Sections 33000, *et sequitur*; and

WHEREAS, the Owner is the owner of the certain real property known as 66146 6th Street, Desert Hot Springs, California, having Assessor's Parcel Number 639-182-040 (the "Property"),

which is described in Exhibit “A,” attached hereto and incorporated herein by reference, which will benefit from the Grants; and

WHEREAS, the Agency and the Owner agreed to impose certain covenants, conditions, restrictions and continuing obligations related to and on the Property; and

WHEREAS, the Agency gave Owner the “Original Grant” in the amount of Fourteen Thousand Five Hundred Sixty One Dollars and 64/100 Cents (\$14,561.64) for replacement of roof and venting; installation of new windows; installation of new air conditioning and heating system; and exterior painting of home (collectively, “Original Scope of Work”); and

WHEREAS, Owner agrees to record this Agreement and further, acknowledges that Owner has already executed the Access Easement Agreement, a copy of which is attached hereto as Exhibit “B” and incorporated herein by reference; and

WHEREAS, the Agency has had an interest in ensuring that the very low-, low- and moderate-income dwelling units in the NRP are properly maintained and that the NRP area remains attractive; and

WHEREAS, on February 1, 2012, the Agency was dissolved by operation of law pursuant to Assembly Bill x1 26, and the Successor Agency was charged with the responsibilities of winding down the affairs of the Agency; and

WHEREAS, subsequent to completion of the Original Scope of Work, including exterior painting of the home, Owner discovered that the paint was peeling off and that the home needed to be repainted; and

WHEREAS, on June 17, 2014, the Successor Agency Board approved a contract with Nicol Home Improvement for the repainting of the Property (“Scope of Work”) for Six Thousand Five Hundred Fifty Dollars and No Cents (\$6,550.00) (“Additional Grant”), and on July 9, 2014, the Successor Agency’s Oversight Board approved of the same; and

WHEREAS, as a result of such approvals, this Agreement now needs to be modified to reflect the new terms.

NOW, THEREFORE, in consideration of the promises contained below and other good and sufficient consideration, the receipt of which is hereby acknowledged, the Successor Agency and the Owner agree that the Property against which these covenants, conditions and restrictions are recorded shall be held, sold and conveyed subject to the following covenants, conditions and restrictions.

1. Agency Supported Affordable Housing. The Agency supported affordable housing for very low-, low- and moderate-income residents within the City, and specifically in the City’s NRP area, as set forth in regulations published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093.

2. Definitions. For purposes of this Agreement, the following definitions shall apply:

(a) “Affordable housing cost” shall have the same meaning as set forth in Health and Safety Code Section 50052.5, as that section is amended or substituted.

(b) “City” shall mean the City of Desert Hot Springs.

(c) “Dwelling unit” means a single family residential home as originally constructed or as reconstructed, altered or replaced.

(d) “Persons and families of low or moderate income” shall have the same meaning as set forth in Health and Safety Code Section 50093, as that section is amended or substituted.

(e) “Very low income households” shall have the same meaning as set forth in Health and Safety Code Section 50105, as that section is amended or substituted.

3. The Property. The Owner is the owner of the Property described above.

4. Term. The terms, covenants, conditions and restrictions contained in this Agreement shall be effective for a period of five (5) years commencing October 21, 2010.

5. Improvement of the Property. The Successor Agency and Owner desire to complete the Scope of Work on the Property. Owner agrees to work cooperatively with the Successor Agency to complete the Scope of Work, and Owner affirms its obligations to abide by the terms and conditions as set forth in Exhibit “B.” In consideration thereof, the Successor Agency agrees to pay for the Scope of Work, along with any plans and/or specifications, the cost of any permits or approvals associated therewith, and all construction, in accordance with the terms and conditions of this Agreement, all in an amount not to exceed the Additional Grant.

6. Disclosure Requirements. Prior to the execution of a purchase and sale agreement between the Owner and any subsequent purchaser of the Property, and prior to the execution of a purchase and sale agreement between any subsequent owner[s] of the Property and any subsequent purchasers, the Owner or subsequent owner[s] (as may be applicable) shall disclose, in writing, to each purchaser the fact that the Property has been improved by the NRP and that the requirements stated in this Agreement will remain in effect for the term described in Section 4.

7. Owner – Occupancy. Owner hereby agrees that Owner will occupy the Property as Owner’s primary residence for a period of five (5) years following the date on which Owner received the Original Grant. Owner’s attempt to rent, or Owner’s actual rental of the Property for any purpose, during this five-year period of restriction shall be a material breach of this Agreement and shall entitle Successor Agency to exercise all available legal and equitable remedies. If Owner sells or leases the Property prior to the termination date of this Agreement, Owner must obtain an agreement to fulfill the remaining terms of this Agreement from the purchaser or tenant of the Property. If Owner fails to obtain such agreement, Owner must repay the Original Grant to the Successor Agency as follows:

- a) If Owner sells or rents the Property during the first year after the completion of the Original Scope of Work described in this Agreement, 100% of the Original Grant amount will become due to the Successor Agency immediately upon sale or rental of the Property.
- b) If Owner sells or rents the Property between one (1) and two (2) years of completion of the Original Scope of Work described in this Agreement, 75% of the Original Grant amount will become due to the Successor Agency immediately upon sale or rental of the Property.
- c) If Owner sells or rents the Property between two (2) and three (3) years of completion of the Original Scope of Work described in this Agreement, 50% of the Original Grant amount will become due to the Successor Agency immediately upon sale or rental of the Property.
- d) If the Owner sells or rents the Property between three (3) and five (5) years of completion of the Original Scope of Work described in this Agreement, 25% of the Original Grant amount will become due to the Successor Agency immediately upon sale or rental of the Property.

8. Monitoring by the Successor Agency. Pursuant to Health and Safety Code Section 33418 the Owner and each subsequent purchaser, transferee or owner of the Property shall be required to submit an annual report to the Successor Agency containing the following information:

- (i) whether there was a change in ownership of the dwelling unit from the prior year; and
- (ii) whether the dwelling unit was leased or rented during the prior year; and
- (iii) if there was a change in ownership, the income and family size of the new owner; and

On or about July 1st of each calendar year, the Successor Agency will mail a form to the record owner of the Property requesting the information set forth in this Section 8. The owner of the Property shall complete the form and return it to the Successor Agency within thirty (30) calendar days after receipt of the request from the Successor Agency.

9. Binding on the Successors in Interest. The Owner hereby covenants and agrees that his or her heirs, successors and assigns, and every successor in interest to the Property, or any part thereof, shall comply with each and every term, covenant, condition and restriction contained in this Agreement. The covenants, conditions and restrictions of this Agreement shall run with the land, any other provision of law notwithstanding, and shall be enforceable by the Successor Agency in an action for specific performance against the Owner and his or her successors in interest.

10. Maintenance of Property.

(a) The Owner and all subsequent grantees, transferees, owners, lessees and tenants of the Property shall maintain the Property, dwelling unit, improvements, landscaping and fixtures in good repair and shall keep the Property free from any accumulation of debris or waste materials, consistent with the customary practice and so as not to create a nuisance, or violate any provision of the City Municipal Code.

(b) All exterior painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. Any such defacing marks shall be cleaned or removed within the time as set forth in subparagraph (d) below.

(c) The Owner shall at all times maintain the front exterior, visible side exteriors and yard in a clean, safe and presentable manner, free from defacing marks or any disrepair. The Owner shall maintain and/or repair the front exterior or rear or visible side yard and exterior of the dwelling unit.

(d) All graffiti and defacement of any type, including marks, words and pictures, must be removed and any necessary painting or repair completed within one (1) week of their creation or within one (1) week after notice to Owner.

(e) Driveways. All driveways must be paved and maintained with impervious material in accordance with the City Municipal Code.

11. Remedies for Breach. Upon breach of any of the covenants, conditions or restrictions set forth in this Agreement, the Successor Agency may exercise any and all remedies available to it at law or equity. These remedies include, without limitation, an action for injunctive relief or specific performance. In the event of a breach of the covenant regarding maintenance of the Property, as set forth in Section 10 of this Agreement, the Executive Director of the Successor Agency, or his or her designee, shall give written notice to the Property owner (as listed on the last equalized tax assessment roll) describing the conditions constituting the breach, demanding that such conditions be corrected, and notifying such owner of the Successor Agency's intention to enter upon the Property to correct such conditions. At any time within fifteen (15) calendar days following the giving of the notice described in the previous sentence, the Owner or any subsequent owner of the Property may request, in writing, a hearing to determine whether the conditions of the Property or the dwelling unit constitute a breach of Section 10 of this Agreement. This hearing shall be held within thirty (30) calendar days following the Successor Agency's receipt of written request from the Owner and shall be held before the Executive Director, or his or her designee. At this hearing, the Owner shall be allowed to introduce evidence in support of his or her position and shall have the right to question those witnesses and evidence against him or her. A transcript or electronic recording of the hearing may be made. At the end of this hearing, the Executive Director, or his or her designee, shall make a finding, based upon substantial evidence in the record of the hearing, as to whether the conditions of the dwelling unit or Property constitute a breach of the terms of Section 10 of this Agreement. The decision of the Executive Director shall be final and there shall be no right of appeal to the City Council.

If the Executive Director, or his or her designee finds that the conditions of the dwelling unit or the Property constitute a breach of Section 10 of this Agreement, then the Successor Agency

shall so notify the Owner in writing and the Owner shall have five (5) calendar days following this written notice to correct or abate such breach. If the conditions are not corrected to the reasonable satisfaction of the Executive Director, then the Successor Agency, its employees or its agents may enter upon the Property to remedy and abate the conditions creating the breach. The Successor Agency shall be entitled to recover its costs of remedying the conditions creating the breach, including, without limitation, administrative, overhead, and engineering costs. Such costs shall become a lien upon the Property pursuant to Civil Code Section 2881, immediately due and payable, and the Successor Agency may collect such costs through the appropriate civil proceedings.

The provisions of this Section 11 are supplemental to all other legal rights and remedies available to either the Successor Agency or the City. Nothing in this Agreement shall modify, limit or circumscribe any other rights, remedies and powers available to either the Successor Agency or the City, including, but not limited to, Successor Agency's right to at any time withhold the balance of any Original Grant or Additional Grant amounts if the Successor Agency's Executive Director determines that Owner's work is substantially out of compliance with the purpose or requirements of the Original Grant.

12. Affordability Restrictions and Nondiscrimination.

(a) Owner covenants and agrees that the residents within the Property are persons or families of very low or low to moderate income whose income does not exceed one hundred twenty percent (120%) of the Riverside County Median Income. The Riverside County Median Income shall mean the median income, adjusted for household size, specifically within the City NRP area, as set forth in regulations published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093.

(b) There shall be no discrimination against or segregation of any person, or any group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex or sexual orientation, in the sale, transfer, use, occupancy or enjoyment of the Property or the dwelling unit; nor shall the Owner or any persons claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the Property or the dwelling unit. Notwithstanding the term limit contained in Section 4 of the Agreement, the covenants and restrictions contained in this Section shall remain in perpetuity.

(c) The Owner shall refrain from restricting the rental, sale, or lease of the Property on the basis of race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

- (i) In Deeds: "The grantee herein covenants by and for himself, herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the

Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

- (ii) In Leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”
- (iii) In Contracts: “The contractor herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this contract is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall be binding upon and shall obligate the contractor and any subcontracting parties, successors, assigns and other transferees under the contract.”

Notwithstanding the foregoing, with respect to familial status, nothing herein shall be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this Section.

13. Successor Agency as Beneficiary. The Successor Agency is the beneficiary of the terms and provisions of this Agreement and the covenants, conditions and restrictions running with the land, both for and in its own right, and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants, conditions and restrictions running with the land have been provided. This Agreement and the covenants shall run in favor of the Successor Agency without regard to whether the Successor Agency has been, remains, or is an owner or has any interest in the Property or in any other parcel in the City. The Successor Agency shall have the right, but not the obligation, to exercise all rights and remedies and to maintain any actions at law or in equity or any other proceedings to enforce the covenants, conditions and restrictions contained in this Agreement.

14. Nonwaiver. The failure of Successor Agency to enforce any one or more of the covenants, conditions or restrictions contained in this Agreement on any one or more occasions shall not constitute a waiver of the Successor Agency's right to enforce the covenants, conditions and restrictions in the future.

15. Entire Agreement. This document contains the entire Agreement between the Successor Agency and the Owner with respect to those matters contained herein. This Agreement may be modified only by a writing duly subscribed by both the Successor Agency and the Owner. Notwithstanding the foregoing, the parties acknowledge that additional covenants, conditions and restrictions may be recorded against the Property in the future. In the event of a conflict or inconsistency between the provisions of this Agreement and such future covenants, conditions and restrictions, the document providing the greater measure of control, greater length of time, or more stringent requirement shall govern and supersede the other document to the extent of such conflict or inconsistency. Other than with respect to a conflict or inconsistency, the provisions of this Agreement and the provisions of any future covenants, conditions and restrictions shall be interpreted and enforced to give effect to the requirements of both documents.

16. Attorneys' Fees. In the event that the Successor Agency or Owner, or any successor in interest of the Owner, brings an action or begins any other proceeding to contest the validity of this Agreement or to enforce any of the covenants, conditions or restrictions in this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the other party its reasonable costs and expenses associated with such action or proceeding. These costs and expenses shall include, but shall not be limited to, the costs of arbitration, reasonable attorneys' fees, expenses associated with the action or proceeding, and the costs of all administrative proceedings and hearings. If payable by the Owner or their successors in interest, such costs and expenses shall become a lien upon the Property pursuant to Civil Code Section 2881, *et seq.*, immediately due and

payable, and that lien may be enforced by the Successor Agency through the appropriate civil proceedings.

17. Interpretation. The Section headings used in this Agreement are for the purposes of convenience only and shall not in any way limit, alter or amend the express terms of each Section. Words used in the singular will include the plural and vice versa.

18. Severability. If any term, provision, or section of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the Successor Agency and the Owner agree that invalid portion or section may be severed from the remainder of this Agreement and the remainder of the Agreement may be enforced in its entirety.

19. Nuisance. The result of every act or omission whereby the covenants contained in this Agreement are violated in whole or in part is hereby declared to be and constitutes a nuisance. Every remedy allowable at law or equity, against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the Successor Agency without derogation of the Successor Agency's rights under law.

20. Covenant Against Partition. The Owner hereby covenants for Owner and for Owner's heirs, representatives, successors and assigns, that it will not institute legal proceedings or otherwise seek to effect partition of their right and interest in the Property or the burdens running with the land as a result of this Agreement.

21. Notices. All notices required to be given by this agreement shall be in writing and shall be personally delivered or mailed by first class registered or certified mail. All notices given by mail shall be deemed delivered seventy-two (72) hours after the date and time of deposit, as shown on a receipt issued by the United States Postal Service. All notices to the Owner shall be addressed to the Property. All notices to the City shall be addressed to Successor Agency to the City of Desert Hot Springs Redevelopment Agency, 65950 Pierson Boulevard, Desert Hot Springs, California 92240. Owner's address for notices may be changed only by written notice given in accordance with the terms of this provision.

22. Cumulative Remedies. The remedies herein provided for breach of the covenants contained in this Agreement shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

23. Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Owner each represent and warrant that they have the legal power, right and actual authority to bind Owner to the terms and conditions hereof and thereof.

24. Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Venue for any dispute arising from this Agreement shall be the County of Riverside, State of California.

25. Rights of Access. For the purpose of assuring compliance with this Agreement, representatives of the Successor Agency shall have the right of reasonable access with prior

notice to the Owner to portions of the Property which allow the Successor Agency and the City to inspect the construction of the improvements detailed in the scope of work during normal construction hours over the course of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements, so long as they comply with all safety rules and do not unreasonably interfere with construction.

26. Indemnification. Owner shall indemnify, defend (with Counsel approved by the Successor Agency) and hold harmless the Successor Agency and its directors, officers, employees agents and representatives (“Successor Agency Parties”), from and against any and all claims, liabilities, costs, damages, suits, proceedings, injuries (including injuries to real and personal property, and injuries to persons, including death) incurred by Successor Agency Parties (“Losses”), arising out of or resulting from the work performed for the Original Scope of Work and the Scope of Work, or which may arise out of any of the matters contemplated by this Agreement, Owner’s negligent acts or omissions, or Owner’s willful misconduct. However, Owner’s obligation to defend shall arise regardless of any claim or assertion that the Successor Agency Parties caused or contributed to the Losses. Nothing in this Section shall constitute a waiver or limitation of any legal rights which the Successor Agency Parties may have including, without limitation, the right to implied indemnity.

SUCCESSOR AGENCY:

OWNER:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF
THE CITY OF DESERT HOT SPRINGS

By: _____
Martin Magana, Executive Director

By: _____
Margaret Ann Block

ATTEST:

By: _____
Jerryl Soriano, Deputy Board Secretary

APPROVED AS TO FORM:

By: _____
Steven B. Quintanilla, General Counsel

EXHIBIT “A”
DESCRIPTION OF PROPERTY

[INSERT LEGAL DESCRIPTION]

APN: 639-182-040

EXHIBIT “B”
ACCESS EASEMENT AGREEMENT
SEE ATTACHED