

<p><b>PIMA COUNTY DEPT. OF: COMMUNITY DEVELOPMENT AND NEIGHBORHOOD CONSERVATION</b></p> <p><b>PROJECT NAME:</b></p> <p><b>CONTRACTOR:</b></p> <p><b>FUNDING:           2004 GENERAL OBLIGATION BOND FUNDS</b></p> <p><b>AMOUNT:</b></p> <p><b>DISTRICT NO.:</b></p>	
<p><b>TERM:                    See body of Contract</b></p>	

**GENERAL OBLIGATION HOUSING BOND FUND CONTRACT**

THIS CONTRACT, hereinafter called "**Contract**", is entered into by and between Pima County, a body politic and corporate of the State of Arizona, hereinafter called "**County**"; and APPLICANT, an Arizona non-profit corporation, hereinafter called "**Contractor**".

**RECITALS**

- A. In an election held on May 18, 2004 (2004 Special Bond Election), Pima County voters authorized the sale of bonds and use of proceeds for, inter alia, acquiring, developing, expanding, improving and equipping new and existing facilities to further the health, education, welfare and safety of the citizens of the County, including, without limitation, housing and other improvements and facilities to further neighborhood reinvestment.
- B. In compliance with Pima County Code Chapter 3.06, titled Bonding Disclosure, Accountability and Implementation, the Board of Supervisors adopted Ordinance No. 2004-18, The Bond Implementation Plan For The May 18, 2004 Special Election (the "**Bond Ordinance**").
- C. The Bond Ordinance (Section VII (B)(1)(c)(2.10)) allocates \$10,000,000.00 in bond proceeds to be issued for investment in projects that expand home ownership opportunities and provide access to affordable housing for low-income residents of Pima County.
- D. Pima County Community Development and Neighborhood Conservation Department, in conjunction with the Pima County Housing Commission, solicited applications and conducted an evaluation process to select innovative projects involving the construction or preservation of housing that is affordable to low-income households meeting U.S. Department of Housing and Urban Development ("**HUD**") Income guidelines.

- E. PROJECT NAME is an existing affordable housing development for [general description of type of project, number of units, tax parcel no. and reference to any relevant legal documents including Pima County Recorder information].
- F. The Development has been determined to meet the goals and purposes of the Bond Ordinance and to be in the best interests of County.
- G. County is authorized, under [A.R.S. §§ 11-251.10](#) and [11-381](#), to provide funding for housing projects that are affordable to persons of low income.
- H. The Board of Supervisors, at their January 13, 2009 meeting, approved an allocation of 2004 General Obligation Bonds in an amount not to exceed \$1,178,000.00 to assist with the Development.
- I. Projects constructed in whole or in part with bond proceeds are subject to the guidelines for bonding disclosure, accountability and implementation of County bond projects contained in Pima County Code Chapter 3.06 and in the Bond Ordinance.
- J. County will reimburse Contractor, in an amount not to exceed \$\_\_\_\_\_ for actual, documented, Project-related expenses allowed pursuant to the terms of this Contract and not reimbursed from other funding sources. Contractor warrants that the City of Tucson (the “City”) will not permit the construction and occupation of the New Units until the completion of the related infrastructure as provided in the Plan. Contractor further warrants that Contractor is unable to meet the conditions of the financing for the construction of the New Units until the infrastructure for the Project is completed.

NOW, THEREFORE, County and Contractor, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

**ARTICLE I - TERM AND EXTENSION/RENEWAL**

- A. This Contract shall commence on the date the Contract and the Performance Deed of Trust in the form attached as **Exhibit A** (the “**Affordability Restriction**”) are executed, and shall terminate upon the termination of the Affordability Period defined in Paragraph II(B)(2) below, unless sooner terminated or further extended pursuant to this Contract. This Contract may be extended for the purpose of Project completion. Any modification, amendment or extension shall be made by a formal written amendment executed by the parties hereto.
- B. Expiration of this Contract will not affect the liabilities of the parties incurred prior to such expiration, nor will it affect the terms of this Contract that, by their express terms or by clear implication, are intended to survive such expiration.

**ARTICLE II – SCOPE**

- A. **County Contribution.** County will provide funding for costs directly incurred by Contractor in construction of the Project in an amount of up to \$\_\_\_\_\_ (“**the Allocated Maximum Amount**”). Any modification, extension or **substantial change**, as defined in the attached **Exhibit B**, shall be made by a formal written amendment executed by the parties hereto.

B. Continuing Affordability. Developer and County acknowledge that the purpose of the Project is to provide a safe, sustainable, and affordable neighborhood of multi-family rental and single family owner units . County has determined that the provision of such housing will be a substantial benefit to the public. In order to realize the public benefits, the parties acknowledge that continuing, rather than merely initial, affordability is required. The following conditions apply depending on the type of unit (occupancy):

RENTAL PROJECTS:

1. Upon execution of this Contract and prior to any payment of bond funds to Developer, Developer shall execute and cause to be recorded the performance deed of trust (“the Affordability Restriction” in the form set forth in **Exhibit A (Affordability Restriction for Rental Projects)**).
2. All units constructed or rehabilitated in consideration of the funding provided under this Contract shall be maintained and rented to qualified households for the “**Affordability Period**.” The Affordability Period shall be for a minimum of thirty (30) years from the date the project is completed and the \_\_\_ [insert number] units have received the final certificate of occupancy from the City of Tucson.
3. The Affordability Restriction will give County a security interest in the Property in an amount equal to the amount of funds contributed by County under this Contract.
4. The Affordability Restriction will be superior to all monetary liens and encumbrances except as specifically set forth in the Affordability Restriction.

HOMEOWNERSHIP PROJECTS:

1. Upon execution of this Contract and prior to the sale of housing unit to a qualified homebuyer, Developer shall execute and cause to be recorded the Affordable Housing Restriction and Lien Agreement in the form set forth in Exhibit A (Affordability Restriction for Homeownership Projects – Addendum to Purchase Contract)
2. **The Affordability Restriction will remain in effect for 30 years from the close of escrow and will require the home to be sold to another low-income homebuyer if sold during the 30 year term.**
3. All units constructed or rehabilitated with bond funds lowers the purchase price of the units for the benefit of the qualified homebuyer.
4. The amount of the lien will be determined prior to execution of the sales contract depending on the amount of bond funds invested (total of all liens will not be more than the appraised value at the time of sale).
5. So long as the qualified homebuyer maintains the unit as his/her household’s primary residence or sells the home to another qualified homebuyer with household income below 80% of area median income, there will be no requirement to repay this lien.

C. This Paragraph II (A) shall survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.

D. Consideration. [*Rental Projects*]As consideration for receiving bond funding provided under this Contract, Developer shall design and build/rehabilitate \_\_\_\_\_ units, maintain and rent the total of to

tenants as designated by the Developer's Project Narrative received on \_\_\_\_\_ and revised on \_\_\_\_\_, attached as **Exhibit C**. Developer shall conduct all activities of the Project in compliance with the following conditions:

1. [All \_ units will be rented to exclusively qualified households. A "qualified household" is ...]
2. [All \_ units will have \_-bedroom(s), \_-bath(s) and living area and be approximately \_\_\_ square feet] as described in the Developer's Plans and Specifications attached as **Exhibit ED**
3. [All rehabilitation of the original \_\_\_ shall be designed and completed in a manner that...].
4. **Project Completion**. All \_\_\_ units must be completed, have a certificate of occupancy from the City of Tucson, and be marketed for occupancy/sale no later than \_\_\_\_\_ unless \_\_\_\_\_.
5. The following restrictions shall apply to the units:[Insert as applicable]
6. Contractor shall complete infrastructure required by the City in the Plan (as may be amended and approved by the City)as described in the Schedule for Development attached as **Exhibit E**

**Consideration.** [*Homeownership Projects*]As consideration for receiving bond funding provided under this Contract, Developer shall design and build/rehabilitate \_\_\_ units, maintain and rent the total of to tenants as designated by the Developer's Project Narrative received on \_\_\_\_\_ and revised on \_\_\_\_\_, attached as **Exhibit C**. Developer shall conduct all activities of the Project in compliance with the following conditions:

1. [All \_ units will be sold to exclusively qualified households. A "qualified household" is ...]
2. [All \_ units will have \_-bedroom(s), \_-bath(s) and living area and be approximately \_\_\_ square feet] as described in the Developer's Plans and Specifications attached as **Exhibit ED**
3. [All rehabilitation of the original \_\_\_ shall be designed and completed in a manner that...].
4. **Project Completion**. All \_\_\_ units must be completed, have a certificate of occupancy from the City of Tucson, and be marketed for occupancy/sale no later than \_\_\_\_\_ unless \_\_\_\_\_.
5. The following restrictions shall apply to the units:[Insert as applicable]:
6. Contractor shall complete infrastructure required by the City in the Plan (as may be amended and approved by the City)as described in the Schedule for Development attached as **Exhibit E**

E. This Paragraph II (C) shall survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.

F. **Contractor's Responsibilities.** In addition to compliance with the requirements set forth in Paragraphs II(B) through (D), Contractor shall:

1. Comply with all requirements set forth in Article II, Paragraphs A, B, and C above.

2. Provide construction management of the entire project.
3. Complete initial site preparation and the installation of all infrastructure, as generally shown on the Preliminary Plans and Specifications in the attached **Exhibit E** (including roadways, street lighting, sidewalks, utilities, etc.), to serve the Development. The infrastructure must meet all legal requirements, building codes, zoning laws and roadway standards established by the City. This construction is currently estimated to be completed approximately twelve (12) months after the date this Contract is executed.
4. Obtain all necessary approvals, permission or permits necessary for the Project.
5. Provide construction management of all aspects of the Project through the completion of the New Units.
6. Furnish a Project Manager to coordinate with County designated Project Manager during the construction of the Project.
7. Submit Monthly Invoices to County. Each invoice must be accompanied by supporting documentation that substantiates the cost of the site preparation and the installation of infrastructure.
8. Construction Documentation. Upon request of County's Project Manager, provide title reports, appraisal reports, construction contracts and other documents or information reasonably related to the work performed under this Contract.
9. Legal Claims. Contractor shall afford County the opportunity to review and comment on all legal claims prior to resolution thereof.
10. Signage. County shall have the right to install signage at the construction site in a location of its choosing, provided that the sign does not interfere with the construction and conforms to any applicable City sign regulations, announcing that the Project is a County bond-funded project, and listing the names of the members of the Board of Supervisors.
11. Recognition. Acknowledge the County's contribution to the Project at any public participation event in a form approved by County. Examples of acceptable forms of recognition include but are not limited to, signs, permanent plaques, County participation in and /or acknowledgment at opening ceremonies and press releases.

G. This Article shall survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.

### **ARTICLE III – FINANCE AND PAYMENT**

A. County shall reimburse Contractor for the actual costs incurred by Contractor as set forth in the Budget attached hereto as **Exhibit E** up to, but not in excess of the Allocated Maximum Amount of \$\_\_\_\_\_.

- B. No payment will be made by County until the following requirements have been met:
1. Execution of Liens. Contractor shall cause to be properly executed and recorded the Affordability Restriction in the form attached to this Contract as **Exhibit A**.
  2. Reimbursement Schedule. Contractor shall, within thirty (30) days after final execution of this Contract, submit to County a preliminary reimbursement schedule showing the anticipated dates and amounts of requests from the Contractor for reimbursement of project expenses incurred and paid by the Contractor. A Final Reimbursement Schedule shall be established and submitted at least fifteen (15) days prior to the start of construction.
  3. Proof of Insurance. Contractor shall have furnished to County proof that it has in place all the insurance policies required by Article V.
  4. Mortgage Policy. If requested by County, issuance of a lender's policy of title insurance insuring the County's lien is valid and superior to all monetary liens and encumbrances on the Property other than the Construction Deeds of Trust County will, if it requests this insurance, pay the premium for it but the cost of the premium shall be deducted from the Maximum Allocated Amount.
- C. Request for Payment. Within ten (10) days of the end of each month, starting on the date indicated in the Final Reimbursement Schedule, Contractor shall submit a "Request for Payment" form with invoice(s) and supporting documentation which must be signed by Contractor acknowledging the provision of the invoiced products or services for the bond-funded project. Contractor shall also certify, in writing, that the funds for which reimbursement is being sought were spent on the public infrastructure for which this grant was awarded. County's Project Manager will perform inspections to ensure that the work has been completed prior to approving and releasing any payments to Contractor.
- D. Withholding of Reimbursement. Notwithstanding any other provision herein, no reimbursement will be made for any Request for Payment until County is satisfied that the work for which the Request for Payment was submitted has been done satisfactorily, the general contractors and subcontractors have been paid (less any retention held by Contractor), and the amounts requested have been verified and are in compliance with the Budget. Failure to pay the general contractor or any subcontractors for work contracted and performed may, in County's sole discretion, result in the withholding of future reimbursements from the Contractor and direct payment by County to the unpaid general contractor or subcontractor.
- E. County Review. If County disapproves of the Request for Payment, the County shall notify Contractor of this disapproval, and the reasons for it (in writing) within ten (10) business days of receipt of the Request for Payment and supporting documentation from Contractor. If the County does not object to the Request for Payment, it shall pay the Request for Payment within thirty (30) business days of receipt.
- F. Monthly Progress Reports. Within ten (10) days of the end of each month, Contractor shall submit a Monthly Progress Report ("Progress Report") in the format set forth in **Exhibit G**. The Progress

Report must be submitted regardless of whether Contractor is seeking reimbursement for the preceding month.

- G. Submittal of Requests for Payments and Reports. All Requests for Payment and Progress Reports shall be submitted to:

Marcos Ysmael, Community Development & Housing Planner  
Community Development and Neighborhood Conservation  
Pima County  
2797 East Ajo Way, 3<sup>rd</sup> Floor  
Tucson, Arizona 85713

- H. Delays. Contractor shall promptly notify the County at any time that Contractor becomes aware of a potential Project delay that may cause a deviation from the Final Reimbursement Schedule and/or the Final Construction Schedule. In the event of any deviation from the Final Reimbursement Schedule, County and Contractor shall revise the Final Reimbursement Schedule, consistent with Federal Treasury Regulations.
- I. Final Report & Accounting. Within ninety (90) days after completion and upon acceptance of the Project by Contractor, Contractor shall submit to County: (1) a final report describing the Project as constructed and summarizing its history (*i.e.*, who designed, constructed, provided public art, funding sources, description of public participation, purpose and public benefit of the Project, etc.), along with photographs and final as built drawings; and, (2) a detailed final accounting statement of the funds expended on the Project, along with a final Request for Payment, if needed. Failure to provide this information within the established time period may result in denial of reimbursement.
- J. Final Review. In the event County discovers that some funds were paid to Contractor by County to reimburse expenses that did not in fact occur or that were not for the construction of infrastructure, Contractor shall promptly repay such amounts to County with interest at the rate of 10% per annum from the time paid by County until repaid to County by Contractor.
- K. Amendment of the Bond Ordinance. The Contractor shall notify the County of any event that would require an amendment of the Bond Ordinance, and shall formally request the County Board of Supervisors to hold a public hearing on the requested amendment. The parties shall follow the procedures for amendment of the Bond Ordinance set forth in Chapter 3.06 of the Pima County Code, as it may be amended or renumbered from time to time, and relevant sections of the Bond Ordinance. In the event the Board of Supervisors does not approve the Contractor's request for a Bond Ordinance amendment, the Contractor shall complete the Project as defined by the Bond Ordinance and this Contract.
- L. Federal Treasury Regulations. Contractor acknowledges that Pima County manages the expenditures of bond proceeds in order to qualify for a spending exception to the arbitrage rebate requirements of Sections 148 through 150 of the Internal Revenue Code of 1986 and the related regulations found in 26 CFR Part 1, §§ 1.148 through 1.150 as may be modified from time to time (such statutes and regulations hereinafter referred to as the "Tax Exempt Bond Rules"). Contractor acknowledges that arbitrage rebate is affected by both the use of bond proceeds and by the timing of bond related expenditures. Notwithstanding any other provision of this Contract, County may, in County's sole discretion, either (i) reallocate Project funds to other projects funded with County

bonds (which may, in some circumstances, result in a delay in payments under this Contract), or (ii) terminate this Contract as set forth in Article XVII below if the County, in its sole discretion, determines that such reallocation or termination is necessary or advantageous to the County under the Tax Exempt Bond Rules in order to (a) qualify for a spending exception to the arbitrage rebate requirements, or (b) reduce the amount of any potential arbitrage rebate or penalty, or (c) manage the County's bond proceeds.

#### **ARTICLE IV – OWNERSHIP**

The improvements and infrastructure constructed pursuant to this Contract are considered to be an integral part of the Development which is owned by the Contractor. Ownership of same, therefore, shall automatically vest in the corresponding political subdivision or in the Contractor. This Section shall survive termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.

#### **ARTICLE V - INSURANCE AND BONDING REQUIREMENTS**

- A. Contractor shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:
1. Commercial General Liability in the amount of \$2,000,000.00 combined, single limit Bodily Injury and Property Damage. Pima County is to be named as an additional insured for all operations performed within the scope of the Contract between Pima County and Contractor;
  2. Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage;
  3. If required by law, workers compensation coverage including employees liability coverage;
  4. Contractor shall provide a Performance Bond for not less than one hundred percent (100%) of the Contract amount, or another method of assurance, approved by the Pima County Board of Supervisors, that the project will be completed; and
  5. Once vertical construction begins, Contractor shall obtain Builder's Risk Insurance in an amount equal to the outstanding amount of the contractual obligations entered into with respect to the New Units, with coverage written on an all risk, replacement cost basis and including coverage for soft costs, flood and earth movement.
- B. Contractor shall provide County with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

#### **ARTICLE VI – INDEMNIFICATION**

- A. Contractor shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by Contractor, its agents,

employees or anyone under its direction or control or on its behalf in connection with performance of this Contract.

- B. Preexisting Conditions. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold County, its boards, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by the Contractor prior to the execution of this Contract.
- C. Notice. Each party shall notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section.
- D. Survival of Termination. This Article shall survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.

#### **ARTICLE VII - COMPLIANCE WITH LAWS**

- A. Contractor shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply, but do not require an amendment.
- B. Compliance with Bond Requirements. Contractor agrees to comply with all applicable provisions of Pima County Code Chapter 3.06, "Bonding Disclosure, Accountability, and Implementation" and of the Bond Ordinance, as they now exist or may hereafter be amended. Any reports to be submitted by Contractor to County in compliance with Pima County Code Chapter 3.06 or the Bond Ordinance shall be provided in a format and schedule determined by County.
- C. For each sale of County bonds, the County issues a Tax Certificate and Contract in compliance with Section 1.148 through 1.150 of the Federal Treasury Regulations specifying the uses, investments and disbursement of Bond proceeds. In the event County determines that a violation of Federal Treasury Regulations is likely to occur or County is notified by the Contractor of a potential delay in the project that will result in a delay in the expenditure of the County bond funds designated for this project, County may reallocate those funds to other projects. County will resume reimbursement payments when bond funds become available again.

#### **ARTICLE VIII - INDEPENDENT CONTRACTOR**

The status of Contractor shall be that of an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees, shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Contractor shall be responsible for payment of all federal, state and local taxes associated with the

compensation received pursuant to this Contract and shall indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such taxes. Contractor shall be solely responsible for program development and operation.

#### **ARTICLE IX - SUBCONTRACTOR**

Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

#### **ARTICLE X - ASSIGNMENT**

Contractor shall not assign its rights to this Contract, in whole or in part, without prior written approval of County. Approval may be withheld at the sole discretion of County, provided that such approval shall not be unreasonably withheld.

#### **ARTICLE XI - NON-DISCRIMINATION**

Contractor shall not discriminate against any County employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out Contractor's duties pursuant to this Contract. Contractor shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Contract by reference as if set forth in full herein.

#### **ARTICLE XII - AMERICANS WITH DISABILITIES ACT**

- A. Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- B. If Contractor is carrying out a government program or service on behalf of County, then Contractor shall maintain accessibility to the program to the same extent and degree that would be required of County under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Contract.

#### **ARTICLE XIII - AUTHORITY TO CONTRACT**

Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County shall not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

#### **ARTICLE XIV - MONITORING AND EVALUATION**

- A. County may inspect any portion of the Project construction for substantial compliance with drawings and specifications and applicable building code and standard provisions. Contractor shall allow

official County representatives reasonable access to the Project site during construction. The Project Manager and County Liaison will cooperate and consult with each other during Project construction.

- B. County shall have the right to monitor all activities and information sources in the management, fiscal and service systems of Contractor and any subcontracted parties, relating to performance of duties and obligations under this Contract, to assure that Contractor is maintaining adequate and acceptable progress and systems, and to ensure that the funds provided to Contractor by County are being used effectively and efficiently to accomplish the purposes for which the funds were made available. County shall have the right to review all contracts between Contractor and any subcontractors hired for the project. Contractor shall be responsible for delivering a copy of all contracts to the Pima County Project Manager named as the contact person in this Contract.

#### **ARTICLE XV - FULL AND COMPLETE PERFORMANCE**

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

#### **ARTICLE XVI - CANCELLATION FOR CONFLICT OF INTEREST**

This Contract is subject to cancellation for conflict of interest pursuant to [A.R.S. § 38-511](#), the pertinent provisions of which are incorporated into this Contract by reference.

#### **ARTICLE XVII - TERMINATION**

- A. Termination without Cause. County reserves the right to terminate this Contract at any time and without cause by serving upon Contractor thirty (30) days advance written notice of such intent to terminate. In the event of such termination, County's only obligation to Contractor shall be payment for services rendered prior to the date of termination.
- B. Termination for Cause. This Contract may be terminated at any time without advance notice and without further obligation to Contractor when Contractor is found by County to be in default of any provision of this Contract.
- C. Arbitrage Rebate Requirements. County reserves the right to cease payments to Contractor and unilaterally terminate this Contract if County determines, in County's sole discretion, that any action or inaction on the part of Contractor is likely to occur that would adversely affect the election made by the County under the Tax Exempt Bond Rules relating to exceptions for arbitrage rebate.
- D. Non-appropriation. Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County shall have no further obligation to Contractor, other than to pay for services rendered prior to termination.

- E. Immediate Suspension. County may suspend operations and payments under this Contract immediately for violation of contractual requirements, unsafe working conditions, violation of Federal or State law, or lack of reasonable progress in accomplishing objectives and schedules contained in this Contract. In the event of such suspension, Contractor shall assist County by providing information and documents to evaluate the status of the Contract and whether it should be continued.
- F. Temporary Suspension. County may temporarily suspend operations and payments under this Contract immediately at any time if the Board of Supervisors or Administration determines that it is in the County's best interest to suspend this Contract. In the event of such suspension, Contractor shall assist County by providing information and documents to evaluate the status of the Contract and whether it should be continued.
- G. Effect of Termination. Any termination of this Contract shall not relieve any party from liabilities or costs already incurred under this Contract, nor affect any ownership of the Project constructed pursuant to this Contract.

**ARTICLE XVIII – NO THIRD PARTY BENEFICIARIES**

Nothing in this Contract is intended to create any duty or obligation to, or rights in, any person or entity that is not a party to this Contract, including the subsequent Homeowners Association or the Community Group as applicable. Furthermore, this Contract is not intended to affect the legal liability of any party to this Contract by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

**ARTICLE XIX – NOTICE**

Any notice required or permitted to be given under this Contract shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

County:

Margaret Kish, Director  
 Betty Villegas, Housing Manager  
 Pima County Community Development  
 & Neighborhood Conservation Department  
 2797 East Ajo Way, 3rd Floor  
 Tucson AZ 85713

Contractor:

APPLICANT NAME  
 ADDRESS

**ARTICLE XX - NON-EXCLUSIVE CONTRACT**

Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

**ARTICLE XXI - OTHER DOCUMENTS**

Contractor and County in entering into this Contract have relied upon information provided in the Pima County General Obligation Housing Bond Fund Solicitation issued on February 28, 2006, and on information provided in Contractor's application, dated September 8, 2008, in response to said

solicitation and the drawings and specifications submitted therein. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein to the extent not inconsistent with the provisions of this Contract.

#### **ARTICLE XXII – REMEDIES**

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

#### **ARTICLE XXIII – SEVERABILITY**

If any provision of this Contract, or any application thereof to the parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Contract which can be given effect, without the invalid provision or application and to this end the provisions of this Contract are declared to be severable.

#### **ARTICLE XXIV - BOOKS AND RECORDS**

- A. Contractor shall keep and maintain proper and complete books, records and accounts of the Project. For bond purposes, the Project books and records must continue to be maintained for a period of three (3) years after final payment of the bonds issued for the Project, or, if later, until any related pending proceeding or litigation has been closed. The bonds funding the Project are expected to be fully paid by June 30, 2026, but may be subject to refunding. Contractor shall have the option of either (i) maintaining the Project books and records for the requisite number of years or (ii) conveying the Project books and records to County any time after the Project is completed. The books, records and accounts of the Project shall be available for inspection and audit by duly authorized representatives of County at all reasonable times during the period in which said books, records and accounts are maintained by the Contractor. Unless Contractor conveys all Project books, records and accounts to County, Contractor shall indemnify and hold the County harmless from and against any amount required to be paid to the Internal Revenue Service or any governmental City or agency arising out of the failure by Contractor to maintain such records.
- B. Inspection and Audit. The County may perform an inspection of the Project or an audit of Contractor's books and records at any time in order to verify that monies spent on the Project were expended in accordance with the terms of this Contract.

#### **ARTICLE XXV – PUBLIC INFORMATION**

- A. Pursuant to [A.R.S. § 39-121 et seq.](#), and [A.R.S. § 34-603\(G\)](#) in the case of construction or Architectural and Engineering services procured under [A.R.S. Title 34](#), Chapter 6, all information submitted in response to this solicitation, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

- B. Any records submitted in response to this solicitation that respondent believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by respondent prior to the close of the solicitation.
- C. Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to [A.R.S. § 39-121 et seq.](#), County shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the respondent of the request for release, unless respondent has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. Respondent shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.
- D. County shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall County be in any way financially responsible for any costs associated with securing such an order.

#### **ARTICLE XXVI – LEGAL ARIZONA WORKERS ACT**

- A. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor’s employment of its employees, and with the requirements of [A.R.S. § 23-214 \(A\)](#) (together the “State and Federal Immigration Laws”). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- B. County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws.
- C. Any breach of Contractor’s or any subcontractor’s warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.
- D. Contractor shall advise each subcontractor of County’s rights, and the subcontractor’s obligations, under this Article by including a provision in each subcontract substantially in the following form:

“Subcontractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to subcontractor’s employees, and with the requirements of [A.R.S. § 23-214 \(A\)](#). Subcontractor further agrees that County may inspect the subcontractor’s books and records to insure that subcontractor is in compliance with these requirements. Any breach of this paragraph by subcontractor will be deemed to be a material breach of this Contract subjecting subcontractor to penalties up to and including suspension or termination of this Contract.”

E. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor’s approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Contractor shall be entitled to an extension of time, but not costs.

**ARTICLE XXVII – SCRUTINIZED BUSINESS OPERATIONS**

Pursuant to [A.R.S. §§ 35-391.06](#) and [393.06](#), Contractor hereby certifies that it does not have scrutinized business operations in Iran or Sudan. The submission of a false certification by Contractor may result in action up to and including termination of this Contract.

**ARTICLE XXVIII– ELIGIBILITY FOR PUBLIC BENEFITS**

Contractor shall comply with the provisions of A.R.S. §§1-501 and 1-502 regarding public benefits, which are hereby incorporated as provisions of this Contract to the extent such provisions are applicable.

**ARTICLE XXIX - ENTIRE AGREEMENT**

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this Contract on the date written below.

**PIMA COUNTY:**

**CONTRACTOR:**

\_\_\_\_\_  
Chairman, Board of Supervisors                      Date

\_\_\_\_\_  
Authorized Signature    Date

\_\_\_\_\_  
Print Name and Title

**ATTEST:**

\_\_\_\_\_  
Clerk of the Board    Date

**APPROVED AS TO CONTENT:**

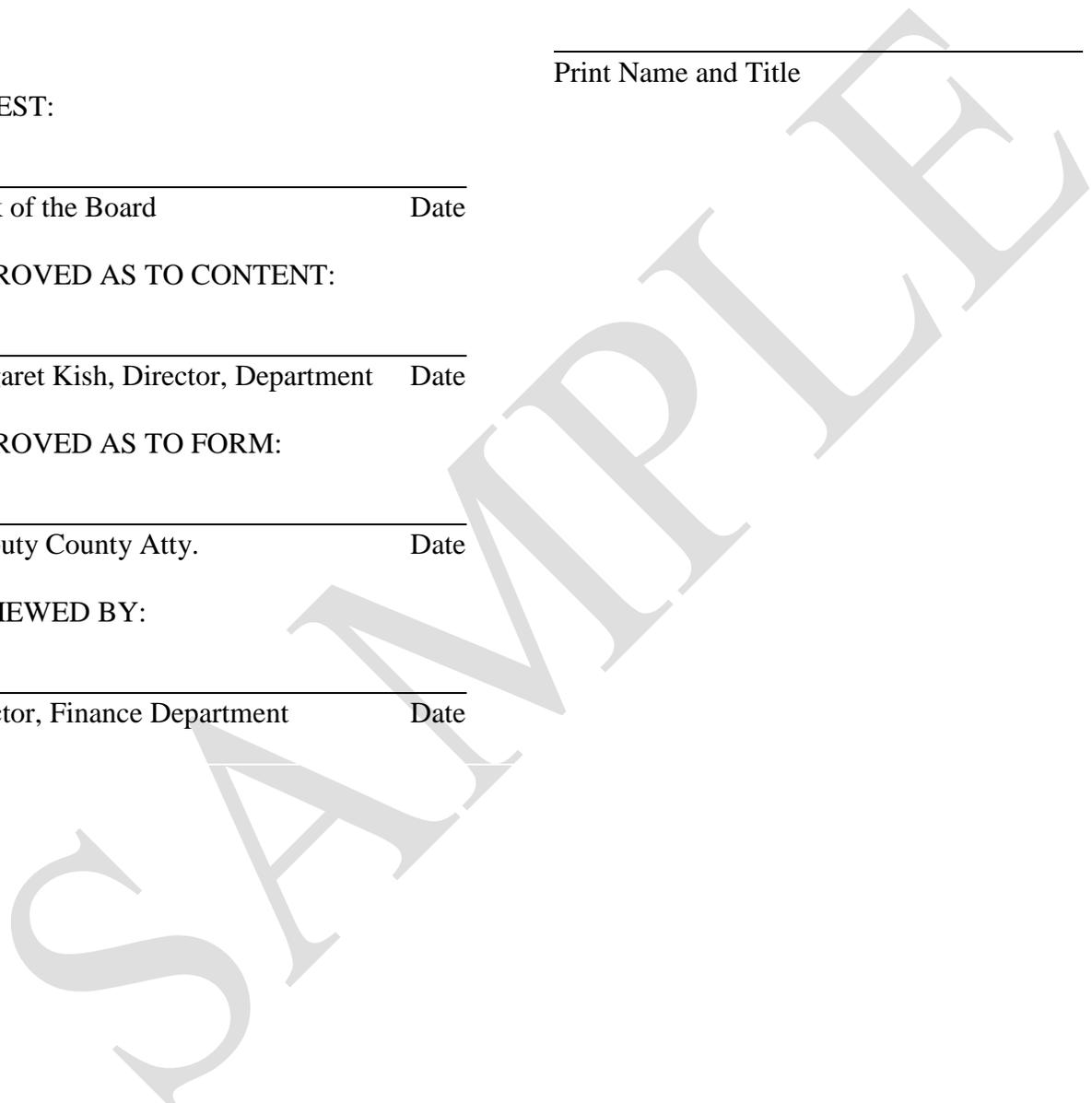
\_\_\_\_\_  
Margaret Kish, Director, Department                      Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
, Deputy County Atty.    Date

**REVIEWED BY:**

\_\_\_\_\_  
Director, Finance Department                                      Date



**EXHIBIT A**

**[The Affordability Restriction – HOMEOWNERSHIP PROJECTS]**

**ADDENDUM TO REAL ESTATE PURCHASE CONTRACT**

**Additional Terms and Conditions of the**

**Pima County General Obligation Affordable Housing Bond Program**

The property subject to these terms and conditions has been partially financed by Pima County General Obligation Affordable Housing Bond Program funds. This funding source requires Pima County to place restrictions on the property regarding the sale of the property to future buyers.

Pima County funds, in the amount of approximately \$ \_\_\_\_\_ (funding amount for unit), require a 30 year affordability period. During the affordability period, if the Buyer chooses to sell this home, Buyer must make every effort to sell the property to another low-income buyer (household earnings less than 80% area median income).

The affordability periods will run concurrently and be secured by an Affordable Housing Restriction and Lien Agreement. The amount of the lien will be determined prior to execution of the purchase contract, but will not be less than \$ \_\_\_\_\_ and will not be more than the appraised value at the time of sale less the amount of the first mortgage. So long as Buyer maintains the home as his/her household's primary residence, there will be no requirement to repay these liens.

**Buyer(s) must initial every provision:**

\_\_\_\_\_ Buyer acknowledges that the county bond funds have lowered the purchase price of this property and are a subsidy to the Buyer.

\_\_\_\_\_ As required, Buyer intends to occupy the home as the household's primary residence.

\_\_\_\_\_ Buyer understands and agrees to sign the Pima County Affordable Housing Restriction and Lien Agreement.

\_\_\_\_\_ Should Buyer wish to sell the property during the first 30 years, Buyer agrees to make every effort to sell the property to a low-income household (as defined above).

***I/We have read and understand the property is subject to affordability restrictions and that such restrictions may be enforced upon sale of the property. I/we agree to the affordability terms:***

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

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

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

## EXHIBIT A – HOMEOWNERSHIP DEVELOPER PERFORMANCE DEED

### PERFORMANCE DEED OF TRUST

THIS PERFORMANCE DEED OF TRUST (as it may be amended and modified from time to time, this "Deed of Trust") is made as of \_\_\_\_\_ 20\_\_\_\_, by and between Southern Arizona Land Trust (SALT), an Arizona nonprofit corporation, as trustor ("Trustor"), with a mailing address of \_\_\_\_\_; PIMA COUNTY, a political subdivision of the State of Arizona, as beneficiary ("County"), with a mailing address as set forth in the heading above; and \_\_\_\_\_, as trustee ("Trustee"), with a mailing address of \_\_\_\_\_.

### RECITALS

- A. Trustor holds title to lots \_\_\_\_\_ of \_\_\_\_\_ ("THE DEVELOPMENT"), a residential subdivision as shown on the plat thereof recorded in Book \_\_\_\_, Page \_\_ of Maps and Plats in the office of the Pima County Recorder (the "THE DEVELOPMENT Lots" or "Trustor Lots").
- A. The THE DEVELOPMENT Lots shall be sold to households in Pima with income at or below 80% of the Area Median Income (AMI) as determined by the U.S. Department of Housing and Urban Development ("Qualified Low Income Buyers").
- B. The THE DEVELOPMENT Lots are subject to Construction Deeds of Trust in favor of \_\_\_\_\_ (the "Construction Lender") securing repayment of a development loan and a revolving loan in a principal amount up to \$\_\_\_\_\_, which documents are recorded in Docket \_\_\_\_\_ at Page \_\_\_\_\_, or at Sequence No. \_\_\_\_\_, in the office of the Pima County Recorder (the "Construction Deeds of Trust").
- C. Pima County and \_\_\_\_\_ have entered into an agreement, dated \_\_\_\_\_, 20\_\_ (the "Funding Agreement"), pursuant to which Pima County has agreed to contribute up to \$240,000.00 (the "County Funding") to \_\_\_\_\_ for the above-described affordable housing project (the "Project"). A copy of the Funding Agreement (*without exhibits*) is attached to this Deed of Trust as Exhibit A.
- D. Pursuant to the Funding Agreement, \_\_\_\_\_ has agreed, as a condition precedent to receiving the County Funding, to cause this Deed of Trust to be executed and recorded in order to secure \_\_\_\_\_'s obligations under the Funding Agreement.

### AGREEMENT

1. **Grant.** FOR GOOD AND VALUABLE CONSIDERATION, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of County, under and subject to the terms and conditions hereinafter set forth, that certain real property described above as the Trustor Lots, together with (i) any and all buildings and other improvements now or hereafter erected on the Trustor Lots; (ii) all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor in connection with the Trustor Lots or as a means of access thereto; (iii) all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Trustor Lots, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Trustor Lots; and (iv) all proceeds of the foregoing; and subject to current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record as of the date hereof, including the Construction Deeds of Trust (together, the "Property").

2. **Purpose.** The above grant is made for the purpose of (i) securing the performance by \_\_\_\_\_ of all its obligations under the Funding Agreement, including the obligation to develop the Corona Rd. Est's and all associated improvements, sell each Trustor Lot to a Qualified Low Income Buyer or Buyers, and repay to County certain sums paid by County to \_\_\_\_\_ under the Funding Agreement in the event that \_\_\_\_\_ sells a Trustor Lot to other than a Qualified Low Income Buyer; and (ii) securing Trustor's performance of all its obligations under this Deed of Trust.
3. **Release of Lots; Recordation of Affordability Restriction.** County will execute a partial release of the lien of this Deed of Trust with respect to a Trustor Lot at such time as the Lot is sold by Trustor to a Qualified Low Income Buyer. The release will be deposited by County with an escrow agent selected by Sunnyside, within fifteen (15) days after receiving from DEVELOPER a written request for the release, along with documentation showing that the Lot is being sold to a Qualified Low Income Buyer. The release will be contingent upon recordation, at closing, of an "Affordability Restriction" in the form set forth as Exhibit "E" to the Funding Agreement, which will restrict subsequent re-sale of the Lot to Qualified Low Income Buyers and provide that the Buyer must, if the Lot is sold to other than Qualified Low Income Buyers, repay to County a stated sum of money, the amount of which will be calculated using a formula set forth in the Funding Agreement attached to this Deed of Trust. The Affordability Restriction will grant to County a lien on the respective Trustor Lot in order to secure this re-sale and contingent repayment obligation, and ***that lien will be considered for all purposes to be a continuation of the lien granted by this Deed of Trust, so that its date for priority purposes will be the date of this Deed of Trust.*** The Affordability Restriction will provide, however, that County's lien is subordinate to any deed of trust granted by Buyer to Buyer's lender to secure repayment of Buyer's purchase money loan.
4. **Obligations of Trustor to Protect Security.** To protect the security of this Deed of Trust, Trustor will:
  - 4.1. Keep the Property in good condition and repair; not remove or demolish any building thereon; complete or restore promptly and in a good and workmanlike manner any building that may be constructed, damaged, or destroyed thereon and pay when due all claims for labor performed and materials furnished for such construction or repair.
  - 4.2. Comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon.
  - 4.3. Refrain from committing or permitting waste thereof.
  - 4.4. Refrain from committing or permitting, and make reasonable efforts to prevent, any act upon the Property in violation of law.
  - 4.5. Provide, maintain, and at County's request provide County with a copy of policies of property insurance.
  - 4.6. Appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of County or Trustee; and to pay all costs and expenses of County or Trustee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which County or Trustee may appear or be named, and in any suit brought by County or Trustee to foreclose this Deed of Trust.
  - 4.7. Pay, before delinquent, all taxes and assessments affecting the Property; when due, all encumbrances, charges, and liens, with interest, on the Property or any part thereof, which

appear to be prior or superior hereto, including the obligations secured by the Construction Deeds of Trust; all costs, fees, and expenses of this Trust, including without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of this Deed of Trust following default.

## **5. Right of County to Protect Security.**

- 5.1. If Trustor defaults in any of its obligations under this Deed of Trust, then at County's option County may, without notice to or demand upon Trustor and without releasing Trustor from any obligation, make or do the same in such manner and to such extent as County may deem necessary to protect its security. County is authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the rights or powers of County or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien that appears to be prior or superior to the County's interest; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay reasonable attorneys fees.
- 5.2. Trustor shall pay immediately and without demand all sums expended by County or Trustee, together with interest from the date of expenditure to the date paid, at the rate of 8% per annum, and this payment obligation will be secured by this Deed of Trust.

## **6. Right to Sell Property**

- 6.1. Upon the occurrence of a default of any obligation of that is secured by this Deed of Trust, County may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee written notice setting forth the nature of the default, and of County's election to cause the Property to be sold.
- 6.2. Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee shall sell, in the manner required by law, the Property at public auction at the time and place fixed by it in the notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor or County, may purchase at such sale.
- 6.3. After deducting all costs, fees, and expenses of sale, including closing costs, the cost of title insurance, and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of all sums then secured by this Deed of Trust and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. §33-812. To the extent permitted by law, an action may be maintained by County to recover a deficiency judgment for any amounts owed that are not covered by sales proceeds.
- 6.4. In lieu of sale pursuant to the power of sale conferred above, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosures of mortgages on real property. County shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative.

**7. Miscellaneous**

- 7.1. Successor Trustee. County may appoint a successor trustee in the manner prescribed by law. A successor trustee will, without specific conveyance from the predecessor trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. A trustee may resign by mailing or delivering notice thereof to County and Trustor.
- 7.2. Binding Agreement. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns and it runs with the land and is binding on all successor owners of the Property or any interest in the Property.
- 7.3. Duties of Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.
- 7.4. Request for Notice by Trustor. Trustor requests that a copy of any notice of trustee's sale hereunder be mailed to Trustor at the address set forth at the beginning of this Agreement.
- 7.5. Notices. All notices to be delivered under this Deed of Trust shall be by first class mail, registered mail or certified mail, postage prepaid, and delivered to the address set forth in this Deed of Trust, unless written notice of a change of address has been delivered.

\_\_\_\_\_, an Arizona nonprofit corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
County of Pima                )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as the \_\_\_\_\_, of \_\_\_\_\_, an Arizona nonprofit corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Margaret Kish, Director, Community Development and  
Neighborhood Conservation

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy Pima County Attorney, Civil Division

## EXHIBIT A – HOMEOWNER AFFORDABILITY RESTRICTION

### When Recorded, Please Return To:

Pima County Community Development and Neighborhood Conservation  
Affordable Housing Program  
2797 E. Ajo Way, 3<sup>rd</sup> Floor  
Tucson, AZ 85713

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### AFFORDABLE HOUSING RESTRICTION AND LIEN AGREEMENT

THIS AGREEMENT (as it may be amended and modified from time to time, the "Affordability Agreement") is made as of \_\_\_\_\_, 2013, by and between \_\_\_\_\_, with a mailing address of \_\_\_\_\_, Tucson, Arizona 85706 (referred to collectively (if more than one) in this document as "Owner"), and PIMA COUNTY, a political subdivision of the State of Arizona, with a mailing address as set forth in the heading above (referred to as "County").

#### RECITALS

- B. Owner is, simultaneously with entering into this Affordability Agreement, buying certain real property described as **Lot \_\_\_\_ of \_\_\_\_\_** (the "Property"), a residential subdivision as shown on the plat thereof recorded in Book \_\_, Page \_\_ of Maps and Plats in the office of the Pima County Recorder.
- B. In order to assist in making the Property affordable for Income-Qualified Persons, including Owner, the County has contributed public funding to the development of a portion of Sunnyside Pointe, including the Property. In order to secure the developer's obligation to sell the Property to Income-Qualified Persons, the County had a deed of trust on certain portions of \_\_\_\_\_, including the Property, recorded in Docket \_\_\_\_\_ at Page \_\_\_\_\_ in the records of the Pima County Recorder's Office (the "County DOT"). The County is, simultaneously with the recordation of this agreement, releasing the Property from the scope of the County DOT and entering into this Agreement with Owner in order to assure the continued affordability of the Property.

#### AGREEMENT

5. **Use Restrictions.** The Property shall be subject to the following covenants regulating and restricting the use and transfer of the Property, commencing on the date hereof. These restrictions shall be covenants running with the Property and shall bind Owner and Owner's successors and assigns for a period of thirty (30) years from the date set forth in the introductory sentence of this Agreement.
- 5.1. **Residential Use.** Owner shall use, and shall cause all occupants to use, the Property only for residential purposes and any incidental activities related to residential use that are currently permitted by applicable state and local zoning laws. Owner shall occupy the Property for at

least nine months of each full year during which Owner is the owner of the Property. Occupancy by children or other immediate family members or dependents of Owner shall be considered occupancy by Owner.

5.2. **Transfers.** Owner shall only convey the Property to an Income-Qualified Person except as otherwise specifically permitted herein. "Income-Qualified Person" shall mean a person or group of persons whose household income does not exceed eighty percent (80%) of the area median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor agency. A proposed buyer's status as an Income-Qualified Person shall be verified in writing by County or a local Community Housing Development Organization in good-standing with HUD or a HUD-certified homebuyer counseling agency.

6. **Transfer to Owner's Heirs.** Notwithstanding the provisions of Section 1 above, following the death of Owner, Owner's interest in the Property may be transferred to one or more of the following possible heirs of Owner: the spouse of Owner, any child or children of Owner, or members of Owner's household who have resided on the Property for at least one year immediately prior to Owner's death. This Affordability Agreement will survive such a transfer and will continue to bind the Property.

7. **Enforcement; Lien.**

7.1. *Injunctive Relief.* County shall have the right to enforce this Affordability Agreement by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, which shall be in addition to, and not in limitation of, any other rights and remedies available to County.

7.2. *Penalty.* In the event that the Property is transferred, whether voluntarily or involuntarily, by operation of law or otherwise, to anyone other than an Income-Qualified Person, during the term of this Agreement, Owner shall immediately pay to County the sum of \$\_\_\_\_\_ (the "Affordability Penalty").

7.3. *Lien.* Owner hereby grants to County a lien on the Property in the amount of the Affordability Penalty, to enforce Owner's obligations under this Agreement (the "County Lien"). The County Lien may be foreclosed by County in the same manner provided by law for the foreclosure of mortgages on real property.

7.3.1. Upon payment of the Affordability Penalty to County, County will execute and record a document releasing the Property from this Agreement, and from the County Lien.

7.3.2. The County Lien will be deemed for all purposes to be a continuation of the lien granted to the County by the County DOT, and shall be superior to all monetary liens and encumbrances other than a lien granted by Owner to a lender for the purpose of securing repayment of a loan obtained by Owner to purchase the Property (a "Purchase Money DOT"). This lien shall be automatically subordinated to a Purchase Money DOT, without the necessity of any further acknowledgement by County, but County will, if requested by Owner, execute a document, in a form reasonably acceptable to County, evidencing such subordination. The County Administrator or his/her designee shall have the authority to execute such a subordination agreement on behalf of the County.

7.3.3. Notwithstanding any implication to the contrary, in the event of a foreclosure or deed in lieu of foreclosure of the Purchase Money DOT, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting Owner's ability to sell the Property shall have no effect on subsequent owners or purchasers of the Property. Any person, including his or her successors or assigns (other than Owner or a related entity of Owner), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the Purchase Money DOT shall receive title to the Property free and clear from such restrictions. The obligation to repay the Affordability Penalty shall terminate after any such foreclosure or deed in lieu of foreclosure, except, however, that in the event the foreclosed property is sold at a trustee's sale or mortgage foreclosure for more than the amount of the balance due on the mortgage, any funds in excess of the amount to satisfy the Purchase Money DOT shall be distributed to County up to the amount of the lien established by the County Deed of Trust.

8. **Severability.** If any provision of this Affordability Agreement shall to any extent be held invalid, the remainder shall not be affected but will remain in effect and valid and enforceable by the parties by any legal or equitable means.
9. **Recordation of Documents.** The benefits of this Affordable Housing Restriction shall be in gross and shall be assignable by County to any successor institution or nonprofit affordable housing organization. County and Owner intend that the restrictions arising hereunder will take effect upon the date hereof. To the extent that the enforceability of this Agreement by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.
10. **Notice.** Any notice, request or other communication which any party hereto may be required or may desire to give to Grantor or Owner shall be made in writing, and shall be deemed to have been properly given if mailed by United States registered or certified mail, postage prepaid, return receipt requested, or hand delivered, and addressed as follows, or such other address as the applicable party may have furnished in writing to the party seeking to serve notice as a place for the service of notice, provided, however, that the Owner shall use reasonable business efforts to ascertain the mailing address of Grantor which is current as of the date of such notice:

County: Pima County Community Development and Neighborhood Conservation  
Affordable Housing Program  
2797 E. Ajo Way, 3rd Floor  
Tucson, AZ 85713

Owner: Notice to Owner shall be provided at the address of the Property.

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11. **Restraint on Alienation.** If this Affordability Agreement is deemed unenforceable by virtue of its scope in terms of purpose or eligibility of Income-Qualified Persons but would be enforceable by reducing or increasing, as applicable, any part or all thereof, the same shall be enforced to the fullest extent permissible under the laws and public policies applied in the State of Arizona.

\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Pima            )

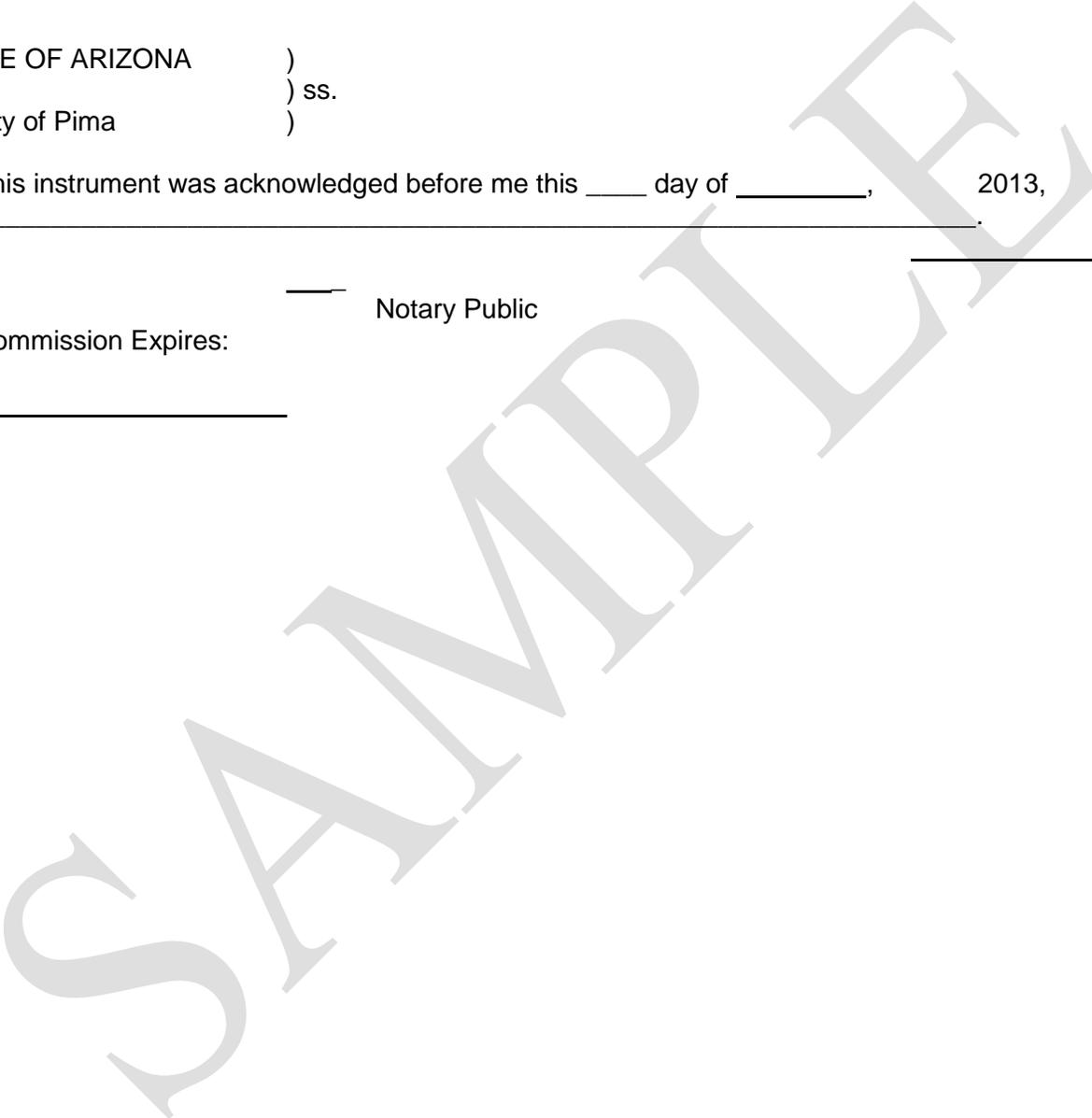
This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



**EXHIBIT A**  
**[The Affordability Restriction – RENTAL PROJECTS]**

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When Recorded, Please Return To:  
Neighborhood Reinvestment Program  
Pima County Community and Economic Development  
2797 E Ajo Way, 3<sup>rd</sup> Flr  
Tucson, AZ 85713-6223

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**PERFORMANCE DEED OF TRUST**  
**General Obligation Housing Bond Fund Contract**

**8. Definitions.**

8.1. Trustor: **APPLICANT, an Arizona non-profit corporation**

whose mailing address is: Tucson, AZ

8.2. Trustee: **[insert name]**

whose mailing address is: **[insert address]**

8.3. Beneficiary: **PIMA COUNTY, a body politic and corporate of the State of Arizona**

whose mailing address is: Community Development and Neighborhood Conservation, 2797 E Ajo Way, 3<sup>rd</sup> Floor, Tucson, Arizona 85713-6223

8.4.Property: The real property situated in the County of Pima, State of Arizona, described in **Attachment A-1** attached hereto, together with all buildings, improvements and fixtures thereon or hereinafter erected thereon.

STREET ADDRESS OF THE PROPERTY:

8.5. Project: Develop the Property with New Units (as defined in the Bond Fund Contract) to house

8.6. Development: the Property as developed by the Project.

8.7. Bond Fund Contract: The Housing Bond Fund Contract between Trustor, as Contractor, and Beneficiary, as County, setting forth the terms and conditions under which Beneficiary will provide bond funds up to \$250,000.00 (the "**Allocated Maximum Amount**") to Trustor for the Project.

8.8. Bond Covenants: Trustor's agreement, pursuant to the Bond Fund Contract, to complete the Project and maintain the Development in compliance with the following conditions:

8.8.1. All units in the Development shall be used to house Qualified Homeless Veterans for the "**Affordability Period**" for the individual unit. The Affordability Period for an Existing Unit shall be for a period of thirty (30) years from the date of the Bond Fund Contract. The Affordability Period for a New Unit shall be for a period of thirty (30) years from the date of first occupancy of that unit. The Affordability Period shall remain in full force and effect regardless of any change(s) in ownership of the Property.

8.8.2. All units in the Development shall be at all times in compliance with the following conditions:

8.8.3. Trustor shall comply with all of the obligations of Trustor under the terms of the Bond Fund Contract.

9. **Parties**. This Performance Deed of Trust ("**Deed of Trust**") is made by, between and among the Trustor, Trustee and Beneficiary.

10. **Grant of Property**. Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee in Trust, with Power of Sale, the Property, together with leases, rents, issues, profits, or income therefrom (all of which are hereinafter called "**Property Income**"), subject to:

10.1. the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply Property Income, and

10.2. current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record, including those conditions subsequent contained in that Quitclaim Deed described as a senior encumbrance in **Attachment A - 2** hereto.

11. **Security**. The grant pursuant to section 3 above is for the purpose of securing:

11.1. Performance of the Bond Covenants;

11.2. Completion of the Project in accordance with the Schedule for Development set forth on **Attachment A - 3**, including but not limited to meeting the target dates set forth on Exhibit C;

11.3. The Allocated Maximum Amount, provided that the parties hereto acknowledge and agree Trustor has no obligation to repay the Allocated Maximum Amount to Beneficiary except as provided in this Deed of Trust and the Bond Fund Contract; and

11.4. Performance of each agreement of Trustor herein contained.

12. **Termination of Deed of Trust.** Notwithstanding any other provision of this Deed of Trust, **this Deed of Trust shall continue to secure the entire Property until the date the Affordability Period has expired with respect to each and every New Unit** (the "**Termination Date**"), at which date this Deed of Trust shall terminate. After the Termination Date, Beneficiary will execute a release of this Deed of Trust within thirty (30) days after receiving a written request from Trustor.

13. **Obligations of Trustor to Protect Security.** To protect the security of this Deed of Trust, Trustor agrees:

13.1. To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon the Property in violation of law; and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

13.2. To provide, maintain, and deliver to Beneficiary, fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary, the entire amount so collected or any part thereof, may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

13.3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorney's fees in a

reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.

13.4. To pay, before delinquent, all taxes and assessments affecting the Property; when due, all encumbrances, charges, and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

14. **Right of Beneficiary or Trustee to Protect Security.**

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

14.2. Trustor shall pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions of Section 7.1, together with interest from date of expenditure at the legal rate. Any amounts so paid by Beneficiary or Trustee shall become a part of the debt secured by this Deed of Trust and a lien on said premises or immediately due and payable at option of Beneficiary or Trustee.

15. **Repayment of Allocated Maximum Amount.** Trustor agrees that the Allocated Maximum Amount shall become immediately due and payable to County, only upon the occurrence of the following events ("**Event of Repayment**"):

15.1. A breach of the Bond Covenants upon the expiration of thirty (30) days after County shall deliver to Trustor a notice of repayment or such longer period of time as shall be reasonable under the circumstances, provided that Trustor shall commence the cure within such thirty (30) day period and thereafter diligently proceed to complete such cure ("**Cure Period**"). The obligation to repay the Allocated Maximum Amount shall cease if Trustor cures the Event of Repayment during the Cure Period, provided that the Allocated Maximum Amount shall again become immediately due and payable upon a subsequent Event of Repayment ; or

15.2. In the event that Trustor sells, contracts to sell, gives an option to purchase, conveys, transfers or alienates the Property, or suffers its title to, or any interest in the Property to be divested, whether voluntarily or involuntarily, excluding, however, any such action taken pursuant to the Bond Fund Contract, Art. II(E)(4), or to which the County consents in writing; or

15.3. The commencement of a sale of the Property by a senior lienholder, either by Trustee's sale or by judicial foreclosure.

## 16. **Right to Sell Property.**

16.1. Upon the occurrence of an Event of Repayment, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold the Property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust.

16.2. Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee shall sell, in the manner required by law, the Property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

16.3. After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums due under the terms hereof, including the Allocated Maximum Amount, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. §33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.

16.4. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosures of mortgages on real property. Beneficiary shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative.

17. **Injunctive Relief.** Trustor agrees that in the event of a breach or threatened breach of the Bond Covenants, Beneficiary or Trustee may seek to enforce such obligations and may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction

against such breach or threatened breach, and Trustor hereby consents to an order permanently enjoining Trustor from violating the Bond Covenants during the term of this Deed of Trust. However, no specification in this Deed of Trust of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach of a provision of this Deed of Trust.

18. **Subordinate Lien.** The lien of this Deed of Trust is junior and subordinate to the encumbrances set forth on **Exhibit A - 2** or as Exhibit B may hereafter be amended by the parties to implement the provisions of the Bond Fund Contract, Art. II(E)(4).

19. **Miscellaneous.**

19.1. Successor Trustee: Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

19.2. Binding Agreement: This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

19.3. Duties of Trustee: That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

19.4. Request for Notice by Trustor: The undersigned Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to him at his address hereinbefore set forth.

19.5. Notices: All notices to be delivered under this Deed of Trust shall be by first class mail, registered mail or certified mail, postage prepaid, and delivered to the address set forth in this Deed of Trust, unless written notice of a change of address has been delivered.

19.6. Attachments: The following exhibits to this Deed of Trust are fully incorporated herein as if set forth at length:

**Attachment A-1 Legal Description of the Property**

**Attachment A-2 Senior Encumbrances**

**Attachment A - 3 Schedule for Development of the Property**

**TRUSTOR: APPLICANT, an Arizona non-profit corporation:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

Its: Executive Director

**PIMA COUNTY, a body politic and corporate of the State of Arizona:**

\_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
, Clerk of the Board

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Margaret Kish, Director, Community Development and  
Neighborhood Conservation

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
, Deputy Pima County Attorney      Date  
Civil Division

\_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss



## Exhibit B

### BACKGROUND:

Pima County funds various Neighborhood Reinvestment and Affordable Housing Program projects with Pima County General Obligation Bond funds (“bond funds”). In order to receive funding, interested parties submit proposals or applications to either the Neighborhood Reinvestment Oversight Committee or the County Housing Commission (“recommending body”).

The Pima County Board of Supervisors (“Board”) reviews the recommendations and determines whether or not a particular project may be funded. Funding is awarded through the execution of a contract or intergovernmental agreement with the appropriate party or jurisdiction. Until such document is properly executed, no bond funds are committed to any particular project. Once a legally binding document is executed, County staff will manage the project to assure contractual compliance.

### PURPOSE:

The contract or intergovernmental agreement sets forth the scope and design of the project. Allowances are made within the document for minor changes. However, at times, the contractor seeks to make *a substantial change* to the scope and design set forth either in the original proposal or application or in the executed document. The following procedures are established to direct the process for the approval of a *substantial change* to a project funded (or seeking funding) by Pima County General Obligation Bond monies.

### PROCESS:

Once a project is approved by the recommending body, there are three points at which a *substantial change* might be requested: (1) prior to initial approval by the Board; (2) after Board approval, but before the execution of a legally binding document; or, (3) after the execution of a contract or intergovernmental agreement.

- 1) **Prior to initial approval by the Board or after Board approval, but before the execution of a legally binding document.**
  - a) The party or jurisdiction seeking bond funds, contacts Pima County Community Development & Neighborhood Conservation (CDNC) program manager regarding the requested change.
  - b) CDNC staff will determine if it is necessary to review documentation and, if so, what documentation the contractor or jurisdiction must provide for the review.
  - c) CDNC staff reviews the change and determines if the requested change is, in fact, substantial and if it is necessary to present the request to the recommending body.
  - d) The recommending body may ask the requesting party to:
    - i) Make a formal presentation regarding the specific changes to the recommending body at a public meeting;
    - ii) Submit a written revision to the original proposal; or

- iii) Submit a new proposal.
- e) After review, the recommending body may choose to:
  - i) Recommend that the Board approve the project for funding as revised; or,
  - ii) Revoke the original recommendation for funding.

**2) After the execution of a legally binding document**

- a) The party or jurisdiction seeking bond funds, contacts Pima County Community Development & Neighborhood Conservation (CDNC) director regarding the requested change.
- b) CDNC staff will determine what documentation contractor or jurisdiction must provide for review.
- c) CDNC staff reviews the change, assesses the impact of the proposed change and, if necessary, discusses the proposed change with the Pima County Attorney's Office.
- d) CDNC staff will discuss the proposed change with the recommending body.
- e) After review, the recommending body may choose to:
  - i) Recommend that the Board of Supervisors (Board) approve the amended project for funding;
  - ii) Recommend that the Board not approve the amended project and continue to enforce the terms set forth in the initial contract or the IGA; or,
  - iii) Recommend that the Board consider termination of the contract or IGA, as allowed under the terms of the contract or IGA.
- f) If necessary, CDNC staff will prepare an amendment to the contract or IGA or the required termination documentation for the Board.
- g) The Board, in its sole discretion, may accept and execute the amendment or proceed with the termination of the contract or IGA.

**3) Program authority.**

The CDNC program manager or department director is charged with reviewing any of the changes proposed by the contractor or the jurisdiction to determine if the proposed changes are a significant deviation from the original approved proposal. In the event that the program manager or department director believe that the changes rise to the level of *substantial change* the process described in this document will be implemented.

**4) Substantial changes.** A *substantial change* includes, but is not limited to, any change in project concept, design or scope that would, by itself, or in combination with other factors do any of the following:

- a) Result in a significant escalation in project cost. This includes either a change in the amount of bond funding sought or a change in other funds dedicated to the project from other sources.
- b) Impact or revise the stated intent of the original proposal or application.
- c) Alter the number or type of specific units or amenities.

- d) Alter the construction schedule in such a manner that will delay the completion of the project.
- e) Alter the construction schedule in such a manner that will change the bond funding schedules.
- f) Result in non-compliance with the bond ordinance.
- g) Result in non-compliance with any federal or state law or regulation.

**END OF EXHIBIT B**

SAMPLE

**EXHIBIT C**

**Project Narrative**

**EXHIBIT D**

**PRELIMINARY PLANS AND SPECIFICATIONS**

**EXHIBIT E**

**PROJECT SCHEDULE**

SAMPLE



