

In May 2016 Pima County adopted a significant change to the Subdivision and Development Street Standards. The Site Group will have to evaluate each requested substitute assurance to determine if conditions 2.2 (A) or (B) are applicable. Please send an email to site@pima.gov with a subject "substitute assurance request". Include in the email the subdivision name and project number (P#). The site group will return the appropriate form by email.

SUBSTITUTE ASSURANCE AGREEMENT FOR CONSTRUCTION OF SUBDIVISION IMPROVEMENTS (Third Party Trust)

THIS AGREEMENT is made and entered into by and between _____ or successors in interest ("Subdivider"), _____, an Arizona corporation ("Trustee"), as proposed trustee under proposed Trust No. _____; and Pima County, Arizona ("County").

1. RECITALS

1.1. Subdivider is the proposed beneficiary and Trustee is the proposed trustee of a proposed trust which is in the process of acquiring ownership of the land ("the Land") located in Pima County, Arizona and described in paragraph 2.1 of this agreement.

1.2. Development of the Land is subject to an existing agreement ("the Existing Agreement") to construct subdivision improvements entered into between the current owner of the property and County.

1.3. The terms of this Agreement are intended to take the place of and supersede the terms of the Existing Agreement at the time ownership of the Land transfers from the current owner to Subdivider and Trustee.

1.4. County, Subdivider and Trustee wish to establish specific terms, conditions, and guidelines relating to the subdivision of the Land and construction of related improvements to comply with A.R.S. § 11-821.

2. AGREEMENT

Based on the foregoing recitals, which are incorporated here as the intent of the parties, and in consideration of County's approval of a final plat for the Land, County, Subdivider and Trustee agree as follows:

2.1. *Property Description.* The Land is all of the real property which is the subject of the subdivision plat ("the Subdivision Plat") identified as _____ recorded in Sequence Number _____ [or, Book _____ of Maps and Plats at Page _____] on the _____ day of _____, 20____, in the Office of the Pima County Recorder.

2.2. *Construction of Subdivision Improvements.* As a condition of subdivision approval, Subdivider hereby agrees to construct all subdivision improvements ("the Subdivision Improvements") contemplated by the Subdivision Plat, rezoning conditions, and any associated site construction permits, including but not limited to onsite and offsite streets, sanitary sewers (if necessary), water and electric utilities, drainage and flood control improvements, parks, trails or other recreational facilities, other required infrastructure, and riparian habitat mitigation or payment of the riparian habitat mitigation in-lieu fee. In addition Subdivider agrees to:

A. At the time of application for any construction permits for site work or buildings, provide a new or updated traffic impact study that incorporates current standards for traffic and roadway analysis

and demonstrates conformance with the currently adopted transportation requirements, and complete any warranted transportation improvements or make necessary modifications to the subdivision to conform.

B. At the time of application for any construction permits for site work or buildings, provide a new or updated drainage report that incorporates current standards for hydrologic and hydraulic modeling and demonstrates conformance with the currently adopted floodplain management requirements, and complete any warranted improvements or make necessary modifications to the subdivision conform.

2.3. *Existing Utilities.* Any relocation or modification of existing utilities or public improvements required in order to construct the Subdivision Improvements shall be done at no expense to the public. Subdividers performance of this requirement shall be considered in determining whether to release assurances under paragraphs 2.5 and 2.6.

2.4. *Assurance of Construction.* This agreement is submitted as an assurance that Subdivider will construct the Subdivision Improvements, as required by A.R.S. § 11-821 and Pima County Zoning Code Chapter 18.69.

2.5. *Limitation on Transfer of Title.* Trustee shall not convey title to any of the Land without obtaining prior written approval from County in the form of a Release of Assurance. A Release of Assurance shall not be provided by County until the Subdivision Improvements are completed in accordance with paragraph 2.12.

2.6. *Partial Release of Assurances.* County shall issue a Release of Assurance for some of the lots depicted on the Subdivision Plat if all of the following have occurred:

A. All of the Subdivision Improvements required in connection with the released lots have been completed in accordance with paragraph 2.12, and

B. County finds that the released lots and the Subdivision Improvements required in connection with them can be used and maintained separately from the Subdivision Improvements not yet completed in accordance with paragraph 2.12, and

C. Recreation area in-lieu fee, if applicable, has been paid to the county for the entire subdivision, prior to a release of greater than 75% of total subdivision lots.

2.7. *Deposit Receipt Agreements.* Notwithstanding paragraph 2.5, Trustee may enter into a deposit receipt agreement for the sale of the Land or any portion of it if the agreement clearly states that no portion of the Land shall be conveyed until Subdivider performs its obligations under this agreement.

2.8. *Bulk Sales.* Notwithstanding paragraph 2.5, Trustee may sell and convey all of the Land in one transaction to a single purchaser who has entered into a satisfactory assurance agreement with County, assuring completion of the Subdivision Improvements.

2.9. *Conveyance Out of Trust for the Purpose of Encumbrance.* Notwithstanding paragraph 2.5, Trustee may convey all or part of the Land to the Subdivider for the sole purpose of encumbering the Land by the recording of mortgages or deeds of trust, provided that the Land is thereafter immediately reconveyed into the trust.

2.10. *Real Property Taxes.* All real property taxes on the Land shall be paid before the taxes are delinquent as defined by A.R.S. 42-18052(B). If the real property taxes on the Land, including any lot or portion of common area, become delinquent, this agreement will be in default.

2.11. *Substitution of Assurances.* Subdivider may submit substitute assurances in a form and amount acceptable to County at any time during which this agreement is not in default.

2.12. *Completion of the Subdivision Improvements.* The Subdivision Improvements shall be

completed by Subdivider not more than four years after the date of this agreement. The Subdivision Improvements shall not be considered completed until after they have been constructed in accordance with the Subdivision Plat, rezoning conditions, associated site construction permits, and after County has inspected them and finds them to be in compliance with the plans.

2.13. *Acceptance of the Subdivision Improvements.* County shall not accept maintenance responsibility for any of the Subdivision Improvements unless and until all of the following have occurred:

- A. They have been completed in accordance with paragraph 2.12.
- B. They have been dedicated to County by the Subdivision Plat or by some other instrument of record.
- C. The dedication has been accepted by the Pima County Board of Supervisors as evidenced by approval of the dedication on the Subdivision Plat or by some other formal action.

2.14. *Default, Non-Compliance; County's Options.* This agreement is in default if either the Subdivider or Trustee fails to comply with obligations under this agreement. If this agreement is in default, the County may exercise any or all options below at its sole discretion:

A. The County may re-plat all or a portion of the Land for the purpose of returning the portions of Land which are the subject of the re-plat to approximately the same boundary configurations of record which existed before the recording of the Subdivision Plat. The Subdivider authorizes the County to execute, on behalf of Subdivider, the re-plat described in this section. The re-plat may exclude any dedications to the public which were made on the Subdivision Plat which are necessary to serve either portions of the Land which are not re-platted, or to serve the public. Subdivider shall pay the reasonable costs incurred in re-platting. Notice of default and intent to re-plat will be sent to the last known address of Subdivider and Trustee by certified mail not less than thirty days before County exercises its option to re-plat under this paragraph.

B. If site conditions change after the Subdivider fails to comply with this agreement, the County may require that Subdivider submit evidence that the Tentative and Final Plat comply with current regulations, under current site conditions. If the County determines that the Tentative Plat or Final Plat does not comply, Subdivider shall submit revisions to the plat, to the County with applicable fees. If the revisions are approved by the Board of Supervisors, the date specified in Section 2.12 of this agreement may be extended by up to four years from the approval date. This subsection is not applicable to Block Plats for master planned communities.

C. The County may withhold the issuance of permits for building regulated by Title 15 of the Pima County Code or work regulated by Title 18 of the Pima County Code.

2.15. *Incorporation and Annexation.* If the Land is incorporated as or annexed by a city or town, the city or town shall automatically succeed to all benefits and duties of County under this agreement.

2.16. *Termination.* This agreement shall remain in full force and effect until one of the following has occurred:

A. The Subdivision Improvements have been completed and approved by County in accordance with paragraph 2.11 and a Release of Assurances with respect to all the Land has been recorded in the Office of the Pima County Recorder in accordance with paragraph 2.5; or

B. A new subdivision plat has been recorded for the Land in compliance with any and all applicable laws and regulations; or

C. A substitute assurance agreement has been executed by and between Subdivider and County in accordance with paragraph 2.11

2.17. *Effect of Failure to Transfer Ownership of the Land.* If ownership of the Land is not transferred to Subdivider and Trustee, or if this agreement does not become effective for any other reason, then the Existing Agreement shall remain in full force and effect.

- 2.18. *Effective Date.* This Agreement is effective on the later of the following events:
- A. When ownership of the Land transfers from the current owner to Subdivider and Trustee, or

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B. On the _____ day of _____, 20____, which is the date of approval of this agreement by the Pima County Subdivision Coordinator

PIMA COUNTY, ARIZONA

SUBDIVIDER:

Pima County Subdivision Coordinator

By: _____

Its: _____

TRUSTEE: _____, an Arizona corporation, as Trustee under Trust No _____, and not in its corporate capacity

By: _____

Its: _____

STATE OF ARIZONA)
County of Pima)

SUBSCRIBED AND SWORN to before me by _____ as (or for) the Subdivision Coordinator of Pima County, Arizona on this _____ day of _____, 20____,

Notary Public

My Commission Expires:

STATE OF ARIZONA)
County of Pima)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ of _____ ("**Subdivider**"), an Arizona corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
County of Pima)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ of _____ ("**Trustee**"), an Arizona corporation, on behalf of the corporation, as trustee under trust number _____.

Notary Public

My Commission Expires:
