



Contract Number: CT.CD.13* 662-01
Effective Date : 2-1-13
Term Date : 1-31-34
Cost : ✓
Revenue : ✓
Total : NTE:
Action
Renewal By : 11-1-33
Term : 1-31-34
Reviewed by: JL

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: August 6, 2013

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

AUTHORIZATION AND EXECUTION OF CONTRACT AMENDMENT NO. 1 AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS; THE AMENDMENT PROVIDES THE CORRECT LEGAL DESCRIPTION OF THE PROPERTY AS A RESULT OF A LOT SPLIT DULY RECORDED BY QUIT CLAIM DEED IN THE OFFICE OF THE PIMA COUNTY RECORDER.

CONTRACT NUMBER (If applicable): **CTCD#1300000000000000662 Ver.#02**

STAFF RECOMMENDATION(S):

STAFF RECOMMENDS APPROVAL AND EXECUTION OF CONTRACT AMENDMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

CORPORATE HEADQUARTERS: District 4

Page 1 of 2

Procure Dept 07/17/13 PM03:57

To: COB - 7.24.13
Agenda - 8.6.13
(2)

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: _____ and/or REVENUE TO PIMA COUNTY:\$

FUNDING SOURCE(S): Federal – HUD HOME Investment Partnerships Program (HOME PROGRAM)
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

		YES	X	NO
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Board of Supervisors District:

1		2		3		4	X	5		All	
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IMPACT:

IF APPROVED: Amendment No. 1 to Contract CTCD# 13000000000000000662 and the revised Declaration of Covenants, Conditions and Restrictions are executed with the correctly described legal description of the property.

IF DENIED: No authorization of Amendment No. 1 Contract CTCD# 13000000000000000662 Ver.#02 and no execution of revised Declaration of Covenants, Conditions and Restrictions, Deed of Trust and Promissory Note with the correctly described legal description of the property.

DEPARTMENT NAME: Community Development and Neighborhood Conservation

CONTACT PERSON: Marcos Ysmael **TELEPHONE NO.:** 624-2947

**PIMA COUNTY COMMUNITY DEVELOPMENT
AND NEIGHBORHOOD CONSERVATION
DEPARTMENT**

PROJECT: Dragonfly Village

CONTRACTOR: Epidaurus dba Amity Foundation
P.O. Box 3043
Tucson, AZ 85702

CONTRACT NO.: CT-CD-13000000000000000662

CONTRACT AMENDMENT NO.: One (#01)

CONTRACT

NO. CT-CD-13000000000000000662

AMENDMENT NO. 01

This number must appear on all
invoices, correspondence and
documents pertaining to this
contract.

ORIG. CONTRACT TERM: 02/01/2013 - 01/31/2034
TERMINATION DATE PRIOR AMENDMENT: n/a
TERMINATION THIS AMENDMENT: 01/31/2034

ORIG. CONTRACT AMOUNT: \$500,000.00
PRIOR AMENDMENTS: \$ 0.00
AMOUNT THIS AMENDMENT: \$ 0.00
REVISED CONTRACT AMOUNT: \$500,000.00

CONTRACT AMENDMENT

RECITALS

1. Pima County ("County") and Epidaurus, a foreign non-profit corporation incorporated in the State of California and operating in Pima County, Arizona under the trade name "Amity Foundation" ("Contractor") entered into the above-referenced Contract for use of HOME program funds provided by the U.S. Department of Housing and Urban Development ("HUD") to construct Dragonfly Village, a new, 30-unit, multi-family transitional housing development.
2. At the time the Parties entered into the Contract, Contractor had not perfected a lot-split in order to properly define the land upon which Dragonfly Village will be built, therefore the legal description of the Dragonfly Village property in the Contract included existing improvement owned by Contractor that will not be subject to the terms, conditions and encumbrances necessary for the use of HOME funds.
3. On March 11, 2013, Contractor recorded a Quit Claim Deed in the Office of the Pima County Recorder at Sequence 20130700656 effectively splitting the originally described property into two separate parcels one of which is a 3.872 acre parcel upon which Dragonfly Village will be constructed.
4. In order to properly secure the performance requirements associated with the provision of HOME funds, the parcel that will be encumbered must be accurately described.
5. Prior to the provision of any funds, Contractor is required to execute and have recorded The Declaration of Covenants, Conditions and Restrictions for Dragonfly Village Transitional Housing Units, a Deed of Trust and Assignment of Rents and a Real Estate Non-Recourse Promissory Note ("the documents").
6. The documents must be amended to include the correct legal description of the property to be subject to federal HOME requirements, affordability restrictions and liens.

THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

- A. GLOSSARY OF TERMS: The definition of "Property" is deleted in its entirety and replaced with the following:

Pima County Tax Parcel ID Number 133-01-025C; no situs address; CIRCLE TREE RANCH PTN PCL 1 & 2 RS 60/9 aka PTN SW4 NE4 NW4 3.78 acres Section 1-14-15

- B. Article XXIV – SCRUTINIZED BUSINESS OPERATIONS is deleted. The remaining Articles are re-numbered to conform.
- C. Exhibit C is deleted in its entirety and replaced with the attached Exhibit C –July 2013.
- D. Exhibit D is deleted in its entirety and replaced with the attached Exhibit D – July 2013.

All other provisions of the Contract, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties.

This amendment shall be effective upon execution by the Chairman, Board of Supervisors, provided that it has been previously executed by the Contractor.

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

PIMA COUNTY:

Chair, Board of Supervisors

Date

CONTRACTOR:

Authorized Officer Signature

Date

Rod Mullen, President and CEO
Printed Name and Title

ATTEST:

Clerk of the Board

Date

APPROVED AS TO CONTENT:

Wangang M. Kue
Director, Community Development and
Neighborhood Conservation Department

07/17/2013
Date

APPROVED AS TO FORM:

Karen S. Friar
Karen S. Friar, Deputy County Attorney

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
DRAGONFLY VILLAGE TRANSITIONAL HOUSING UNITS**

OWNER: Epidaurus, a foreign non-profit corporation incorporated in the State of California and operating in Pima County, Arizona under the trade name “Amity Foundation”

COUNTY: Pima County, a body politic and corporate of the State of Arizona

PROPERTY: CIRCLE TREE RANCH PTN PCL 1 & 2 RS 60/9 aka PTN SW4 NE4 NW4 3.87 acres SEC 1-14-15; Pima County Tax Parcel No. 133-01-025C; no situs address; specifically described in Attachment 1

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS IS MADE IN FAVOR OF COUNTY BY OWNER AND IS EVIDENCE OF OWNER’S AGREEMENT TO COMPLY WITH CERTAIN RESTRICTIONS IN CONSIDERATION OF RECEIVING A LOAN OF FEDERAL HOME PROGRAM GRANT FUNDS FOR USE IN THE DEVELOPMENT OF IMPROVEMENTS ON THE PROPERTY.

RECITALS

WHEREAS, Owner applied for grant funds available through the HOME Investment Partnerships Program as defined in Part 92 of title 24 of the Code of Federal Regulations, as amended, to construct transitional housing for the very low- and low-income homeless in Pima County; and

WHEREAS, Owner has been awarded a loan of HOME Program grant funds in the amount of \$500,000.00 from County under Pima County Contract No. CT-CD-13*662; and

WHEREAS, Owner must use these grant funds to construct a 30 unit, multi-family, rental housing complex with associated community facilities and common areas which shall be transitional housing for homeless individuals and families with household incomes at or below 60% of the area median income; and

WHEREAS, by entering into the contract and accepting the HOME Program grant funds, the transitional housing project will be subject to several restrictions and regulations established by the U.S. Department of Housing and Urban Development, including occupancy and rent restrictions, for at least 20 years; and

WHEREAS, the provisions contained in Part 92 of title 24 of the Code of Federal Regulations, as amended, are incorporated into this Declaration by this reference as if fully set forth herein; and

~~*WHEREAS*, Owner understands and agrees to comply with all such restrictions and regulations for the Affordability Period set forth herein.~~

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner hereby makes this Declaration and declares that the covenants, conditions and restrictions set forth herein shall run with the land, the parties agree as follows:

PART I: Definitions

The following words, phrases or terms used in this Declaration will have the following meanings:

1. **“Adjusted Income, Annual Income, Monthly Adjusted Income, Monthly Income”** means the household income of tenants or potential tenants calculated as prescribed in Part 813 of title 24 of the Code of Federal Regulations.
 2. **“Affordability Period”** means the time period during which the Property is subject to this Declaration, as specified in Part II, Paragraph 2 of this Declaration.
 3. **“AMI”** means Area Median Income as established by HUD.
 4. **“Declaration”** means this Declaration of Covenants, Conditions, and Restrictions for Dragonfly Village Transitional Housing Units
 5. **“Dragonfly Village”** means the 30-unit affordable rental, multi-family, transitional housing complex for homeless individuals and families, along with associated community buildings, that will be developed and operated by Owner on the Property.
 6. **“HOME Program”** means the HOME Investment Partnerships Program delineated in Part 92 of title 24 of the Code of Federal Regulations, as it currently exists and as it may be modified in the future.
 7. **“HOME-Assisted Units”** means those units designated as HOME-assisted under Part 92 of title 24 of the Code of Federal Regulations and attributed to the Tucson/Pima County HOME Consortium in Dragonfly Village and subject to the restrictions set forth herein.
 8. **“Floating HOME Units”** means the units within the Project that are designated as HOME-Assisted the identity of which may change over time, so long as the newly designated HOME-Assisted unit is comparable to other HOME-Assisted unit being replaced in number of bedrooms, bathrooms and amenities. “Floating HOME Units” is defined in 24 CFR § 92.252. The total number of HOME assisted units in the project may not be decreased.
 9. **“High HOME Rent”** means rent published by HUD based on the lower of 30% of 65% of adjusted area median income and fair market rent.
 10. **“HOME Funds”** means funds made available under Part 92 of title 24 of the Code of Federal Regulations through allocations and reallocations, plus all repayments and interest or other return on the investment of these funds.
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11. **“HQS”** means HUD Housing Quality Standards set forth in 24 CFR 982.401.
 12. **“HUD”** means the United States Department of Housing and Urban Development.
 13. **“Initial Rent and Utility Allowance Schedules”** refer to the rent schedule and utility allowance schedules attached hereto as Attachment 3. The amounts set forth in these schedules are the minimum

rent and utility allowances for the HOME-Assisted units throughout the Affordability Period. HUD may amend the rents and allowances to levels that fall below the initial rent schedule and utility allowances.

14. "Loan Agreement" means the Contract between Owner and County that establishes the terms and conditions for the receipt and use of the \$500,000.00 of HOME Program grant funds; Pima County Contract No. CT-CD-13*662.

15. "Low HOME Rent" means rent published by HUD based the lower of 30% of 50% of adjusted area median income; 30% of family's adjusted income; or, the High HOME Rent if the Low HOME Rent is greater.

16. "Low-income household" means households whose annual incomes do not exceed 80% AMI. HUD may establish income ceilings higher or lower than 80% AMI based on HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low household incomes.

17. "Over-income tenants" refer to tenant households whose incomes, after initial occupancy, equal or exceed 80% AMI.

18. "Project" means Dragonfly Village.

19. "Project Completion" means the filing of a final project completion report (form HUD-40087) as attached Exhibit F to the Loan Agreement and the final disbursement of HOME funds to Owner.

20. "Tenant Participation Plan" refers to the fair lease and grievance procedure developed by Owner and provided to County that provides for and follows a program of tenant participation in management decisions.

21. "Transitional Housing" means housing that:

- a. Is designed to provide housing and appropriate supportive services to homeless individuals, homeless individuals with disabilities, and homeless families with children; and
- b. Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the participating jurisdiction or project owner before occupancy.

22. "UPCS" means the Uniform Physical Condition Standards established by HUD as provided in the Final Rule published in the Federal Register in Vol. 65, No. 237, Friday, December 8, 2000 (24 CFR Parts 5 and 200), Docket No. FR-4452-F-02.

23. "Very Low-Income Households" means households whose annual incomes do not exceed 50% AMI. HUD may establish income ceilings higher or lower than 50% based on HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low household incomes.

PART II: Covenants, Conditions and Restrictions

In order to retain its classification as a housing project which qualifies as affordable housing for the purposes of the HOME Program, through the term of the Affordability Period, the following restrictions apply to the Project:

1. HOME-Assisted Units: Five (5) of the 30 rental units in the Project shall be designated as County HOME-Assisted Units for homeless individuals and families meeting income eligibility standards specified below. For these five units, the following apply:

- a. Two (2) will be one bedroom, one bath units.
- b. Two (2) will be two bedroom, two bath units.
- c. One (1) will be a three bedroom, three bath unit.
- d. At least one (1) of the one bedroom units will be designated for rent to homeless individuals or families with household earnings, at initial occupancy, at or below 50% AMI for the Affordability Period. The remaining units will be designated for rent to homeless individuals or families with household earnings at or below 60% AMI at initial occupancy.
- e. All five (5) units will be "floating" for purposes of compliance with the above restrictions.

2. Affordability Period: The HOME-Assisted Units shall be rented under the restrictions set forth below for **twenty (20) years** from the date of first occupancy of the last HOME-assisted unit to be occupied.

3. Use of Property: All five (5) of the HOME-Assisted units shall:

- a. Be rented or available for rent exclusively to homeless individuals or families with household incomes that does not exceed the income limits set forth in Part II, Paragraph 1(d); and
- b. Continue to be HOME-Assisted and remain affordable, pursuant to the Loan Agreement, Deed of Trust and this Declaration's covenants which shall run with the land, regardless of any change in ownership.

4. Rent Limitation: All five (5) of the HOME-Assisted Units in the Project shall bear rents the lesser of fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR § 888.111 or:

- a. For the four (4) HOME-Assisted Units designated for rent to households with earnings at or below 60% AMI, the High HOME rent determined and published annually by HUD.
- b. For the one (1) unit designated for rent to a household with earnings at or below 50% AMI, the Low HOME determined and published annually by HUD.

~~c. In determining the maximum monthly rent that may be charged for a unit that is subject to the~~
limitations above, Owner must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant, as is provided in Part II, Paragraph 5.

5. Rent Schedule and Utility Allowances: The County must review and approve:

- a. Rents proposed by Owner for all HOME-Assisted Units:
 - i. Subject to the maximum rent limitations as described herein and in 24 CFR § 92.252; and
 - ii. Subject to the maximum rent limitations.
- b. The monthly allowances proposed by Owner for utilities and services to be paid by the tenant.
- c. The maximum monthly rent as established by HUD.
- d. Any change in rent or utility allowances which Owner believes is warranted by changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services. Rent may not be increased until the end of the then current lease term and Owner must provide tenants with not less than 30 days prior written notice before implementing any increase in rents.

6. Tenant Income Limitations: Pursuant to 24 CFR § 92.203, the income of each potential tenant must be determined prior to occupancy and must be certified by Owner on an annual basis in accordance 24 CFR § 92.252. Owner must certify each tenant's household income in compliance with HUD income eligibility criteria and the criteria set forth in Part II, Paragraph 1(d) on a form or forms to be approved by County. Owner must maintain records that document the income eligibility of each tenant household. Owners may not refuse to lease HOME-Assisted units to a certificate or voucher holder under the Section 8 Program because of the status of the prospective tenant as a holder of such certificate, voucher or comparable document.

7. Increases in Tenant Income: Owner must re-examine the income of each tenant household living in a HOME-Assisted Unit annually.

- a. The Project will continue to be considered affordable housing if there is temporary non-compliance with Paragraphs II(1)(d), (2) and (3) and 24 CFR § 92.252, paragraphs (a) or (b) if the non-compliance:
 - i. Is due to an increase in the household income of an existing tenant; and
 - ii. Owner is taking actions satisfactory to HUD to ensure that all vacancies are filled in accordance with 24 CFR §92.252, paragraph (i) until the non-compliance is corrected.
- b. If, at the annual review, a tenant's household income exceeds the limits set forth in Paragraph II(1)(d), that tenant must pay rent that is the lesser of fair market value or 30% of the household's adjusted monthly income. However, this requirement will not apply for units with funding under 24 CFR Part 92 and allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

~~**8. Property Standards:** Owner must maintain the Project in accordance with all applicable state and local codes, zoning, and ordinances, HQS and UPCS.~~

9. Tenant and Participant Protections: All HOME-Assisted Units in the Project shall comply with the following:

- a. The lease must be for not less than one year, unless by mutual agreement between the tenant and the owner.
- b. The following lease terms are **prohibited**:
 - i. Agreement to be Sued: Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
 - ii. Treatment of the Property: Agreement by the tenant that Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit. In that event, Owner may dispose of this personal property in accordance with state law;
 - iii. Excusing Owner From Responsibility: Agreement by the tenant not to hold Owner or Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
 - iv. Waiver of Notice: Agreement of the tenant that Owner may institute a lawsuit without notice to the tenant;
 - v. Waiver of Legal Proceedings: Agreement by the tenant that Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
 - vi. Waiver of a Jury Trial: Agreement by the tenant to waive any right to a trial by jury;
 - vii. Waiver of right to appeal court decision: Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
 - viii. Tenant Chargeable With Cost of Legal Actions Regardless of Outcome: Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- c. As transitional housing, it is anticipated that the total length of tenancy shall be no more than two (2) years, unless otherwise agreed to by County.
- d. Owner shall not refuse to lease a HOME-assisted Unit on the basis that the prospective tenant is a holder of a Rental Vouch Program certificate of family participation under 24 CFR part 887 ~~or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program.~~
- e. Termination of Tenancy: Owner may not terminate the tenancy or refuse to renew the lease of a tenant of a HOME -assisted unit for the Project except when:
 - i. Tenant has reached the end of their transitional housing term as specified in the lease;

- ii. For serious or repeated violations of the terms and conditions of the lease; or
- iii. For violation of applicable federal, state, or local laws.

Any termination or refusal to renew must be preceded by Owner's service upon the tenant of at least 30 days advance written notice specifying the grounds for the action.

- f. **Tenant Selection:** Owner of the Project must adopt written tenant selection policies and criteria that:
 - i. Are consistent with the purpose of providing housing for homeless individuals and families with household incomes at the levels set forth in Paragraph II(1)(d);
 - ii. Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;
 - iii. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
 - iv. Provide for the prompt written notification to any rejected applicant explaining the grounds for any rejection.

10. Tenant Participation Plan: Owner must establish and maintain a Tenant Participation Plan to ensure tenants are involved in the management and decision-making of the property and fair lease and grievance procedures as provided by 24 CFR § 92.303.

11. Religious Organizations: The Project will not be provided for rental or use to any primarily religious organizations, such as churches, for any activity including secular activities. The completed housing project must be used exclusively by Owner for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the Project.

12. Affirmative Marketing: For all HOME-Assisted Units in the Project:

a. Owner shall comply with the following Affirmative marketing requirements and procedures:

- i. All correspondence and notices shall contain either the Equal Housing Opportunity logo or slogan. The logo is available on HUD's website at:

<http://portal.hud.gov/hudportal/HUD?src=/library/bookshelf/1/hudgraphics/theologo>

- i. Prominently display Equal Opportunity Fair Housing Posters in English and Spanish in all leasing and housing counseling offices. The posters are available on HUD's website at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7802.pdf or by contacting County.
- ii. Advertise availability of HOME-Assisted Units in minority-owned newspapers, on minority radio and/ or television stations and with other local and affiliate newspapers, television and radio stations.
- iii. Include the equal housing opportunity logo or slogan in all advertisements.
- iv. Solicit applications for vacant HOME-Assisted Units from the homeless population, particularly to persons who are least likely to apply for the HOME-Assisted Units absent special outreach efforts. In general, persons who are not of the race/ethnicity of the residents in the neighborhood surrounding the Project, as indicated in U.S. Census documents, shall be considered those least likely to apply.
- v. Use available resources to reach potential clients, including, but not limited to:
- 1) Community organizations
 - 2) Housing counseling agencies
 - 3) Places of worship
 - 4) Social service centers
 - 5) Tucson-Pima Coalition to End Homelessness
 - 6) Homeless service centers and shelters
 - 7) Employment centers
 - 8) Medical service centers
 - 9) Fair housing groups
- vi. Maintain files containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letters ...) and the results of these various marketing efforts. All such documentation shall be available for inspection by County.
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- vii. Maintain a listing of all tenants residing in each HOME-Assisted Unit at the time of application submittal through the end of the compliance period.

b. County will assess the following activities by Owner:

i. Affirmative marketing efforts; by comparing predetermined occupancy goals (based upon the area from which potential tenants will be drawn) to actual occupancy data that Owner is required to maintain.

ii. Outreach efforts; by reviewing marketing efforts.

iii. Marketing efforts during the rent-up period and marketing of the HOME-Assisted Units by use of, at a minimum, an annual compliance certification or personal monitoring visit to the Project.

c. Should Owner fail to follow the affirmative marketing requirements, corrective actions County deems appropriate shall be taken including, but is not limited to, requiring more extensive outreach efforts to appropriate contacts to achieve occupancy goals.

13. Period of Record Retention: All pertinent documents, books, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, income examinations, and other records relating to the project and Property specified herein shall be retained for five (5) years following expiration of the Affordability Period set forth in this Declaration. Notwithstanding the foregoing, if any litigation, claim, negotiation, audit, or other action has been started before the expiration of the period of affordability specified herein, the records must be retained for five years following completion of the action and resolution of all issues which arise from it, or for five years following the end of the Affordability Period, whichever is later.

14. Inspection and Audit of Records: Owner shall make available at all reasonable times, for inspection, transcription, excerpting, examination, copying, and audit by County, the State, the State Auditor General, HUD, the Comptroller General of the United States, or any of their representatives and designees, all pertinent books, documents, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, income examinations, and other records (hereinafter referred to as "Records") relating to the Project and Property specified herein. Upon request by such inspecting or auditing entity, a legible copy of all such Records shall be produced by the owner at the specified office of Commerce, the County, the State, the State Auditor General, or at any other reasonable location. The original of all such Records shall also be available and produced for inspection, copying, and audit when needed to verify the authenticity of a copy.

15. HOME Program Required Reports: Owner shall file an annual report as set forth in the Loan Agreement with County in a format approved by County demonstrating compliance with the HOME Program and this Declaration. The annual report shall include the following:

a. Records demonstrating that each household renting the HOME-assisted units was income eligible at the time of leasing and annually thereafter.

b. Records demonstrating compliance with the Rent and Income Limitation clause of this Declaration.

c. Records demonstrating compliance with the Affirmative Marketing clause of this Declaration.

- d. Records documenting the extent to which each racial and ethnic group and single head of households (by gender of household head) have applied for, participated in, or benefited from any part of the Project paid for with HOME Funds.

16. Occupancy of HOME-Assisted units: The employees of the Owner are covered persons under 24 CFR § 92.356(f) and, therefore, are prohibited from occupying a HOME-Assisted Unit in the Project. However, on a case-by-case basis, County could consider granting an exception to the prohibition so long as circumstances warrant and the exception is permitted by the HOME regulations.

17. Program Income: Any program income as defined in the Loan Agreement shall be returned to County as specified therein.

PART III: Remedies

1. Remedies of the County:

- a. If Owner breaches any covenant, condition, or restriction set forth herein, and if such breach remains uncured for a period of sixty (60) days after notice of the breach has been given by County (or for an extended period approved in writing by County), County shall be entitled to any or all of the following remedies:
 - i. Return of all HOME Funds provided for the Project, plus interest at the maximum rate permitted by law, and an amount attributable to the increase in equity in the Property attributable to the use of the HOME Funds;
 - ii. Resort to any court having jurisdiction of the subject matter for specific performance of this Declaration, for an injunction against any violation of this Declaration, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Declaration, or for initiation of foreclosure proceedings; or
 - iii. Such other relief as may be appropriate, it being acknowledged by Owner that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's breach of this Declaration, because the beneficiaries include the very low income and low-income households to be benefited by Owner's use of HOME Funds.
- b. County shall be entitled to reimbursement of reasonable attorneys' fees and all costs incurred in any such judicial action in which the County shall prevail.
- c. County shall require reasonable assurances of security for repayments required pursuant to this section in the form of the Deed of Trust appended to the Loan Agreement assigning a beneficial interest for the Project to County, which Owner shall execute as part of this Declaration.

2. Remedies are Cumulative: Each right, power and remedy of County provided for in this Declaration, now or hereafter existing at law or in equity or by statute or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Declaration or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by County of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law or in equity or by statute or

otherwise shall not preclude the simultaneous or later exercise by County of any or all such other rights, powers or remedies.

3. Remedies of Other Parties: The occupancy requirements set forth in this Declaration also shall inure to the benefit of, and may be judicially enforced against Owner by affected households who are, or were, eligible for the HOME-Assisted Units. Any such party that prevails in such judicial action against Owner shall be entitled to reimbursement of its reasonable attorneys' fees and costs.

PART IV: Representations and Warranties Of Owner

1. Valid Execution: Owner represents and warrants that Owner has validly executed this Declaration and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity to:

- a. Enter into this Declaration;
- b. Carry out Owner's obligations as described in this Declaration; and
- c. Assume responsibility for compliance with all applicable federal, State and local laws, codes, ordinances, rules and regulations.

2. No Conflict or Contractual Violation: To the best of Owner's knowledge, the making of this Declaration and Owner's obligations hereunder:

- a. Will not violate any contractual covenants or restrictions between Owner and any third party or any such covenants or restrictions affecting the Property;
- b. Will not conflict with any of the instruments that create or establish Owner's authority;
- c. Will not conflict with any applicable public or private restrictions;
- d. Do not require any consent or approval of any public or private authority which has not already been obtained; and
- e. Are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against:
 - i. Owner, without regard to capacity;
 - ii. Any person with whom Owner may be jointly or severally liable; or

~~iii. The Property or any part thereof.~~

3. No Litigation: No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Declaration.

4. No Bankruptcy: There is no pending or, to Owner's best knowledge, threatened any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for owner under any federal, state or other statute, law, or regulation relating to bankruptcy, insolvency or relief for debtors.

5. No Encumbrances or Attachment: Owner shall not allow the Property to be attached in any manner, including, but not limited to, any liens or other encumbrances or any mortgages or other security interest, except for those liens and encumbrances set forth in Attachment 2 to this Declaration, without the prior written consent of the County.

6. Indemnification: Owner agrees to indemnify, defend and hold harmless the County from and against all liabilities, losses, claims, damages, demands, suits, liens, judgments, reasonable attorney's fees, costs and expenses incurred by the County as a result of any material inaccuracy in any of the representations and warranties contained in this Part IV.

PART V: Miscellaneous

1. Binding Effect; Covenants Running With the Land: During the Affordability Period, this Declaration and the covenants, conditions and restrictions contained herein shall be deemed to be covenants running with the land for the benefit of Pima County and its successors, and shall pass to and be binding upon Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Declaration and the covenants, conditions and restrictions shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Affordability Period and in accordance with the terms hereof said covenants, conditions and restrictions shall expire. Each and every agreement, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions, and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such agreement, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, conditions and restrictions shall run to each portion of the Property.

2. Recordation: Owner, at its cost and expense, shall cause this Declaration to be duly recorded or filed and re-recorded or re-filed in the Office of the Pima County Recorder and such other places as appropriate, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of County to enforce this Declaration.

3. Amendments: This Declaration may not be amended or modified except by a written instrument signed by each party hereto and recorded or filed as this Declaration was recorded or filed.

4. Notices: All notices required or permitted to be given pursuant to this Declaration must be in writing and will be deemed to have been duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

COUNTY:

CONTRACTOR:

Pima County Community
Development and Neighborhood
Conservation Department
Margaret Kish, Director
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

EPIDAURUS
Rod Mullen, President and CEO
P.O. Box 3043
Tucson, AZ 85702-3043

With a copy to:

Betty Villegas, Affordable Housing
Program Manager
801 W. Congress Street
Tucson, AZ 85745

With copies to:

Epidaurus dba Amity Foundation
Ray Clarke, Vice President
146 E. Broadway
Tucson, AZ 85701

Epidaurus dba Amity Foundation
Mike Salazar, Asset Manager
10500 E. Tanque Verde Road
Tucson, AZ 85749

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this section.

5. Compliance With Laws, Permits and Certifications: Owner shall comply with all federal, state and local laws, codes, ordinances, rules, and regulations, conditions and assurances and shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required in regard to the Property.

6. Governing Law: This Declaration, as it may affect the rights, remedies and obligations of the County, shall be governed by and construed in accordance with federal law. Insofar as federal law does not apply, the provisions of this Declaration shall be governed by and construed in accordance with the laws of the State of Arizona.

7. Severability: This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

8. Indemnification: Owner will protect, defend, indemnify, and hold harmless County from and against any and all liabilities, damages, demands, claims, suits, liens, and judgments of whatever nature including but not limited to claims for contribution or indemnification for injuries to or death of any person or persons caused by, in connection with, or arising out of any activities undertaken by Owner pursuant to this Declaration or any negligence of Owner relating to the project or the Property. Owner's obligation to protect, defend, indemnify, and hold harmless as set forth in this section shall include any and all attorneys' fees incurred by County in the defense or handling of said suits, demands, judgments, liens and claims and all attorneys' fees and investigation expenses incurred by County in enforcing or obtaining compliance with the provisions of this Declaration.

9. Section Titles: Section titles are for descriptive purposes only and shall not control or limit the meaning of this Declaration as set forth in the text.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

EXHIBIT C – NOT FOR EXECUTION

10. Entire Agreement: This Declaration and the Loan Agreement contain the entire understanding between the parties hereto with respect to the restrictions on the Property and Project. The Owner has executed a Real Estate Non-Recourse ("Note") secured by an Deed of Trust Assignment of Rents and Security Agreement ("Deed of Trust"), which Deed of Trust secures the obligations of this Declaration, the Loan Agreement, and the Note.

IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures as of the date listed below.

Pima County

Epidaurus

Chair, Board of Supervisors

Rod Mullen, President and Chief
Executive Officer

ATTEST:

Clerk of the Board

proved as to Content:

Ap

Director, Community Development and Neighborhood Conservation Department

Approved as to Form:

Karen S. Friar, Deputy County Attorney

State of Arizona)
) ss
County of Pima)

Acknowledged before me on _____, 2013, by
_____, as President and Chief Executive Officer of Epidaurus, a
California non-profit corporation operating in Pima County, Arizona under the trade name
"Amity Foundation".

Notary Public

My commission expires: _____

ATTACHMENT 1

Parcel Description: Pima County Tax Parcel No. 133-01-025C

Physical Address: No situs address assigned
Tucson, Arizona

LEGAL DESCRIPTION

A PORTION OF THE NORTH HALF OF SECTION 1, TOWNSHIP 14 SOUTH, RANGE 15 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF **PARCEL 1**, AS SHOWN ON THE RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9, RECORDS OF THE PIMA COUNTY RECORDER, PIMA COUNTY, ARIZONA;

THENCE NORTH 00°15'19" EAST 231.01 FEET UPON THE WEST LINE OF **PARCEL 2** AS SHOWN ON SAID RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9;

THENCE SOUTH 90°00'00" EAST 205.11 FEET;

THENCE SOUTH 83°22'32" EAST 66.64 FEET;

THENCE NORTH 11°28'18" EAST 7.84 FEET;

THENCE SOUTH 90°00'00" EAST 126.61 FEET;

THENCE SOUTH 37°13'37" EAST 61.97 FEET;

THENCE SOUTH 00°00'00" WEST 42.70 FEET;

THENCE SOUTH 58°57'47" WEST 73.68 FEET;

THENCE SOUTH 49°48'10" WEST 26.02 FEET;

THENCE SOUTH 48°54'32" WEST 33.54 FEET;

THENCE SOUTH 03°54'28" WEST 50.72 FEET;

THENCE SOUTH 84°51'02" EAST 35.60 FEET;

THENCE SOUTH 04°19'09" WEST 235.88 FEET;

THENCE NORTH 89°44'41" WEST 344.96 FEET TO THE WEST LINE OF SAID

PARCEL 1;

THENCE NORTH 00°15'19" EAST 225.32 FEET UPON SAID WEST LINE TO THE **POINT OF BEGINNING.**

CONTAINING 168,656 SQUARE FEET OR 3.872 ACRES, MORE OR LESS.

ATTACHMENT 2

Permitted Encumbrances

1. The Federal Home Loan Bank of San Francisco's Affordable Housing Program (AHP) restriction agreement(s).
2. Arizona Department of Housing (ADOH) restriction agreements for ADOH HOME and Housing Trust Funds.
3. USDA Rural Development Loan restriction agreements.

ATTACHMENT 3

HOME PROGRAM RENT LIMITS AND UTILITY ALLOWANCE

HOME PROGRAM RENT LIMITS

2012 RENT LIMITS City of Tucson / Pima County Effective 01/20/2012

Table 1

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
LOW Home	\$528	\$566	\$680	\$785	\$876	\$966	\$1057
HIGH Home	\$570	\$670	\$860	\$987	\$1081	\$1175	\$1268

All rents must be adjusted for utility allowances established locally (see Table 2). The allowable rent is the applicable high or low rent less the utility allowance for those utilities paid by the tenant.

UTILITY ALLOWANCES City of Tucson / Pima County Effective 01/01/13

Table 2

SINGLE FAMILY/PATIO/MOBILE HOME

TYPE OF UTILITIES	DOLLARS PER MONTH					
BEDROOM SIZE	0	1	2	3	4	5
ELECTRICITY	\$15	21	26	31	39	45
ELECTRIC HEAT	28	38	48	58	72	82
ELECTRIC HOT WATER	13	18	23	28	35	39
ELECTRIC COOKING	4	6	7	9	11	13
EVAP. COOLING	7	10	13	16	20	23
A/C	17	23	30	37	47	53
GAS HEAT	16	20	24	28	33	37
GAS HOT WATER	7	9	10	12	14	16
GAS COOKING	3	3	4	4	5	6
WATER/SEWER (City)	51	63	78	94	133	160
TRASH (CITY)	17	17	17	17	17	17
TRASH (COUNTY ONLY)	20	20	20	20	20	20
REFRIGERATOR	4	4	4	4	4	4
RANGE	3	3	3	3	3	3
PROPANE HEAT	23	32	41	50	64	73
PROPANE HOT WATER	10	14	18	22	27	31
PROPANE COOKING	4	5	7	8	10	12

APARTMENT/CONDO/TOWNHOUSE

TYPE OF UTILITIES	DOLLARS PER MONTH					
BEDROOM SIZE	0	1	2	3	4	5
ELECTRICITY	\$13	18	23	27	34	39
ELECTRIC HEAT	25	33	42	51	63	72
ELECTRIC HOT WATER	12	16	20	24	30	34
ELECTRIC COOKING	4	5	6	8	10	11
EVAP. COOLING	6	8	11	13	17	19
A/C	14	20	26	31	40	46
GAS HEAT	16	19	23	27	33	36
GAS HOT WATER	7	8	10	12	14	16
GAS COOKING	2	3	4	4	5	6
WATER/SEWER	48	59	71	85	114	138
TRASH (CITY)	17	17	17	17	17	17
TRASH (COUNTY)	20	20	20	20	20	20
REFRIGERATOR	4	4	4	4	4	4
RANGE	3	3	3	3	3	3
Propane Heat	23	32	41	50	64	73
Propane Hot Water	10	14	18	22	27	31
Propane Cooking	4	5	7	8	10	12

APPLYING RENT AND INCOME LIMITS TO YOUR PROJECT

Annually, HUD publishes Fair Market Rents and calculations of rents affordable to families earning 65 percent and 50 percent of median income (see Table 1). Low and High HOME rents are determined based on these figures. (See the HOME regulations for a detailed explanation of how these are determined.) Following is a step-by-step guide to applying the High and Low HOME rent limits to your project. Note that the requirements vary depending on the number of HOME-assisted units.

1 TO 4 HOME-ASSISTED UNITS:

For projects with 1 to 4 HOME-assisted rental units, the following requirements apply:

Rent Limits:

- All HOME-assisted units must have rents at or less than the High HOME Rent (see Table 3), adjusted for utility allowances.

Table 3

HIGH HOME	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
RENT	\$570	\$670	\$860	\$987	\$1081	\$1175	\$1268

Income Limits:

- All HOME-assisted units must be rented to families at or less than 80% of median income.
1 Person family \$33,850 4 Person family \$48,300 7 Person family \$59,900
2 Person family \$38,650 5 Person family \$52,200 8 Person family \$63,800
3 Person family \$43,500 6 Person family \$56,050

5 OR MORE HOME-ASSISTED UNITS:

For projects with 5 or more HOME-assisted rental units, the following requirements apply:

Rent Limits:

- 20% of the HOME-assisted units must have rents at or less than the Low HOME Rent (see Table 4), adjusted for utility allowances.

Table 4

LOW HOME	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
RENT	\$528	\$568	\$680	\$785	\$876	\$966	\$1057

- The remaining 80% of HOME-assisted units must have rents at or less than the High HOME Rent (see Table 5), adjusted for utility allowances.

Table 5

HIGH HOME	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
RENT	\$570	\$670	\$860	\$987	\$1081	\$1175	\$1268

Income Limits:

- All HOME-assisted units must be rented to families at or below 80% of median income:
1 Person family \$33,850 4 Person family \$48,300 7 Person family \$59,900
2 Person family \$38,650 5 Person family \$52,200 8 Person family \$63,800
3 Person family \$43,500 6 Person family \$56,050
- 90% of the total number of HOME-assisted units must be rented to families at or below 60% of median income:
1 Person family \$25,380 4 Person family \$36,240 7 Person family \$44,940
2 Person family \$29,040 5 Person family \$39,180 8 Person family \$47,880
3 Person family \$32,640 6 Person family \$42,060
- 20% of the total number of HOME-assisted units must be rented to families at or below 50% of median income. These same units must have rents at or less than the Low HOME Rent (see table 4), adjusted for utility allowances. These units can be the same units that count toward the 90% requirement above.
1 Person family \$21,150 4 Person family \$30,200 7 Person family \$37,450
2 Person family \$24,200 5 Person family \$32,650 8 Person family \$39,900
3 Person family \$27,200 6 Person family \$35,050

END OF EXHIBIT C

When recorded, return to:

Pima County Community Development and Neighborhood Conservation
801 W. Congress St.
Tucson, AZ 85745

DEED OF TRUST AND ASSIGNMENT OF RENTS

Dragonfly Village Transitional Housing Development

DATE: _____, 2013

TRUSTOR: Epidaurus, a California non-profit corporation operating in Pima County Arizona under the trade name "Amity Foundation", with a local Arizona mailing address of:
P.O. Box 3043, Tucson, Arizona 85702-3043

TRUSTEE: _____
whose mailing address is: _____

BENEFICIARY: Pima County, a political subdivision of the State of Arizona,
whose mailing address is:
Pima County Community Development & Neighborhood Conservation
Attention: Pima County HOME Program
801 West Congress Street
Tucson, Arizona 85745

THE PROPERTY: Property situated in Pima County, Arizona, described as follows:
CIRCLE TREE RANCH PTN PCL 1 & 2 RS 60/9 aka PTN SW4 NE4 NW4
3.87 acres SEC 1-14-15

See Attachment 1 hereto. Together with all buildings, improvements and fixtures thereon or hereafter erected thereon.

Street address and identifiable location of this property:

No situs address assigned, Tucson, Arizona 85749
Pima County Tax Parcel ID Number 133-01-025C

This Deed of Trust is made on the above date, by and between and among the Trustor, Trustee and Beneficiary above named.

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

SUBJECT, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income, and further 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.

FOR THE PURPOSE OF SECURING:

- A. Payment of the HUD HOME Program indebtedness in the principal sum of \$500,000.00 evidenced by a Promissory Note in favor of Beneficiary of even date herewith, and any extension or renewal thereof, executed by Trustor.
- B. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a Promissory Note or Notes reciting that they are secured by this Deed of Trust.
- C. Performance of each agreement of Trustor contained in this Deed of Trust.
- D. Performance of Trustor of each agreement and covenant contained in the Declaration of Covenants, Conditions, and Restrictions (the "**CC&Rs**") made by the Trustor and recorded in Sequence _____, Office of the Pima County Recorder.
- E. Performance of the terms of the Pima County HOME Program funding contract, Pima County Contract No. CT-CD-13*662, between Beneficiary and Trustor (the "**HOME Funding Agreement**").

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

- 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 said 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 action upon the Property in violation of law; and to 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.
- 2. To provide, maintain, and deliver to Beneficiary fire and other property insurance satisfactory to and with loss payable to Beneficiary. Beneficiary may apply any amounts collected under any fire or other insurance policy to any indebtedness secured hereby and in such order as Beneficiary may determine, or at the sole option of Beneficiary all or any portion of the amount so collected may be released to Trustor. Such application or release does not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.
- 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 and costs 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.
- 4. To pay, before delinquent, all taxes and assessments affecting the Property, 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 Partial Release and Partial Reconveyance or 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.

Should Trustor fail to make any payment or to do any action herein provided, 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 believe 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 reasonable attorney's fees and costs and recover the same from Trustor.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note or notes secured by this Deed of Trust or at the legal rate if it secures a contract or contracts other than a promissory note or notes secured by this Deed of Trust. 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 the Property or immediately due and payable at option of Beneficiary or Trustee.

6. That any award of damages in connection with any direct or indirect exercise of governmental police power or eminent domain, or for injury to the Property by reason of public use, or for damages for private trespass or injury thereto, is assigned and will be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and the ownership thereof subject to this Deed of Trust). Upon receipt of such moneys Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

7. That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

8. That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement, and without liability therefor, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the Property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof; (c) join in granting any easement thereon; (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge hereof.

9. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee will release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. The recitals in such reconveyance of any matters or facts are conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

10. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect the Property Income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such Property Income as it becomes due and payable. Upon any such

~~default. Beneficiary may at any time, without notice, either in person, by agent, or by a receiver appointed by a~~
court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such Property Income, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees and costs, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such Property Income, and the application thereof as aforesaid, does not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

11. That upon default by Trustor in (a) the payment of any indebtedness secured hereby, (b) the performance of any obligation in the *HOME Funding Agreement*, (c) the performance of any obligation in the Declaration of Covenants, Conditions and Restrictions ("**CC&Rs**"), or (d) in performance of any agreement hereunder, Beneficiary may, after giving written notice of default to Beneficiary and upon Beneficiary's failure to cure such default within ten (10) days of such notice for nonpayment of any amount due or within sixty (60) days of such notice for any other default, declare all sums secured hereunder immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature of the default, and of election to cause the Property to be sold under this Deed of Trust.

Trustee will record and give notice of Trustee's sale in the manner required by law. After the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee will sell, in the manner required by law, the Property at public auction at the time and place stated in the notice of Trustee's 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 will deliver to any purchaser its Deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. Any person, including Trustor, Trustee, or Beneficiary, may purchase the Property at such sale.

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 and costs, Trustee will apply the proceeds of sale to payment of all sums then secured hereby 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. 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 foreclosure of mortgages on real property. Beneficiary also has all other rights and remedies available hereunder and at law or in equity. All rights and remedies under this Deed of Trust are cumulative.

12. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein will, without conveyance from the predecessor Trustee, succeed to all the predecessor Trustee's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor, by registered or certified mail, and by recordation of a Notice of Resignation of Trustee in the Office of the County Recorder in each county in which the Property or some part thereof is situated.

13. That this Deed of Trust applies to, inures to the benefit of, and binds all parties thereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" means the owner and holder of the promissory note or notes secured hereby, whether or not named as Beneficiary herein. 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.

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14. 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 is a party unless brought by Trustee.

Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

TRUSTOR:

Epidaurus, a California non-profit corporation operating in Pima County, Arizona under the trade name "Amity Foundation".

By: _____

Title: _____

ACKNOWLEDGEMENT:

State of Arizona)

) ss.

County of Pima)

This instrument was acknowledged before me this _____ day of _____, 2013, by _____, as _____ of Epidaurus, a California non-profit corporation operating in Pima County, Arizona under the trade name "Amity Foundation".

Notary Public

My commission will expire: _____

Accepted and Approved by:

Director, Pima County Community Development and Neighborhood Conservation Department

Exhibit D, Attachment 1

Parcel Description: Pima County Tax Parcel No. 133-01-025C

Physical Address: No situs address assigned
Tucson, Arizona

LEGAL DESCRIPTION

A PORTION OF THE NORTH HALF OF SECTION 1, TOWNSHIP 14 SOUTH, RANGE 15 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF **PARCEL 1**, AS SHOWN ON THE RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9, RECORDS OF THE PIMA COUNTY RECORDER, PIMA COUNTY, ARIZONA;

THENCE NORTH 00°15'19" EAST 231.01 FEET UPON THE WEST LINE OF **PARCEL 2** AS SHOWN ON SAID RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9;

THENCE SOUTH 90°00'00" EAST 205.11 FEET;

THENCE SOUTH 83°22'32" EAST 66.64 FEET;

THENCE NORTH 11°28'18" EAST 7.84 FEET;

THENCE SOUTH 90°00'00" EAST 126.61 FEET;

THENCE SOUTH 37°13'37" EAST 61.97 FEET;

THENCE SOUTH 00°00'00" WEST 42.70 FEET;

THENCE SOUTH 58°57'47" WEST 73.68 FEET;

THENCE SOUTH 49°48'10" WEST 26.02 FEET;

THENCE SOUTH 48°54'32" WEST 33.54 FEET;

THENCE SOUTH 03°54'28" WEST 50.72 FEET;

THENCE SOUTH 84°51'02" EAST 35.60 FEET;

THENCE SOUTH 04°19'09" WEST 235.88 FEET;

THENCE NORTH 89°44'41" WEST 344.96 FEET TO THE WEST LINE OF SAID

PARCEL 1;

THENCE NORTH 00°15'19" EAST 225.32 FEET UPON SAID WEST LINE TO THE **POINT OF BEGINNING.**

CONTAINING 168,656 SQUARE FEET OR 3.872 ACRES, MORE OR LESS.

Exhibit D, Attachment 2

PIMA COUNTY HOME PROGRAM

REAL ESTATE NON-RECOURSE PROMISSORY NOTE
(With Balloon Payment)

Date: _____, 2013

Property: CIRCLE TREE RANCH PTN PCL 1 & 2 RS 60/9 aka PTN SW4 NE4 NW4 3.87 acres SEC 1-14-15; Pima County Tax Parcel No. 133-01-025C; no situs address; specifically described in Attachment 1

Amount: **Five Hundred Thousand Dollars (\$500,000.00)**

Definitions: The following terms shall have the same meaning throughout this document:

Affordability Period 20 years from the date of first occupancy of the last HOME-Assisted unit, defined in the Contract, to be occupied

CC&Rs Declaration of Covenants, Conditions, and Restrictions for Dragonfly Village setting forth the obligations of Epidaurus for the utilization of federal HOME funds

Contract Contract between Epidaurus and Pima County setting forth the terms and conditions by which Epidaurus is provided with federal HOME funds for the construction of a 30-unit transitional housing project to be called "Dragonfly Village"; Pima County Contract No. CT-CD-13*662

County Pima County, Arizona, a body politic and corporate of the State of Arizona

Deed of Trust The Deed of Trust and Assignment of Rents naming Epidaurus as Trustor and Pima County as Trustee to secure performance for the HOME funds contributed for the construction of Dragonfly Village

Dragonfly Village See Project

Note This Real Estate Non-Recourse Promissory Note

Maker Epidaurus, a California non-profit corporation operating in Pima County, Arizona under the trade name "Amity Foundation".

Project Dragonfly Village; a 30 unit transitional housing project for very low- and low-income homeless and associated community buildings to be constructed on the Trust Property located on the Property in Tucson, Arizona

Trust Property Parcel of real property described in Attachment 1 and located in Tucson, Arizona owned by Maker upon which Dragonfly Village will be constructed and operated; described with particularity in the Deed of Trust and intended for Dragonfly Village

Promise to Pay: For value received, the undersigned Maker promises to pay County pursuant to the terms of this Note the principal sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) with interest at 0% per annum.

Payments: Maker will make one balloon payment at the end of the Affordability Period as defined in the Contract and more particularly described below in Pima County, Arizona. All amounts of principal and interest, if any, remaining unpaid under this note at the end of the 20year Affordability Period will be repaid. The balloon payment will be five hundred thousand dollars (\$500,000.00) unless deferred as provided below. All amounts payable hereunder are payable in legal tender of the United States of America. Acceptance by County of any payment in an amount less than the amount then due hereunder is an acceptance on account only and not an accord and satisfaction.

Security: This Note is secured by an Assignment of Beneficial Interest under that certain Deed of Trust dated the same date as this Note, executed by Maker, assigning all of Maker's interest under that Deed of Trust to County. The Deed of Trust encumbers the Trust Property. A portion of the construction and/or development costs to build the Project on the Trust Property will be derived from the proceeds of this Note. The Deed of Trust also secures the performance of the Contract between Maker and County which is funded by the U.S. Department of Housing and Urban Development HOME Program administered by County.

Deferral of Payments: Principal and interest will be paid no later than twenty (20) years from the date of first occupancy of the last HOME-Assisted unit to be occupied, as evidenced by the date upon which County approves the HOME Completion Report (HUD Form 40087) for the Project. As a special consideration, provided that Maker has not defaulted on either the Deed of Trust or the Contract, County, in its sole discretion and with written approval of the Pima County Board of Supervisors, may waive or forgive all or any portion of the loan amount in consideration for an extension of the Affordability Period for a minimum of an additional ten (10) years. The intent of this provision is to provide Maker with the ability to earn a reasonable annual return on its investment in the Property. This provision does not, without further action of the County as set forth above, forgive any portion of the principal or interest due County hereunder.

Optional Prepayments: Maker may prepay all or any portion of this Note. Prepayment of this Note does not release Maker of any obligation specified in the CC&Rs for the Project recorded in favor of County.

Collection Procedures, Waiver of Notice: Time is of essence of this Note and each provision hereof. Maker waives grace, notice, notice of default, notice of intent to accelerate, notice of acceleration, protest, demand, presentment for payment and diligence in the collection of this Note, and in the filing of suit hereon, and agrees that its liability and the liability of its heirs, personal representatives, executors, administrators, trustees, beneficiaries, successors and assigns for the payment hereof shall not be affected or impaired by the release or change in the security or by any increase, decrease, change, modification, renewal or extension of the indebtedness or its determination, mode and time of payment. County has the right at all times to decline to make any such release or change in any security given to secure the payment of this Note and to decline to make any such increase, decrease, change, modification, renewal or extension of the indebtedness or its determination, mode or time of payment. This Note is a joint and several obligation when signed by more than one party.

Non-Recourse Note: The obligations described in this Note are secured by the Assignment of Beneficial Interest under the Deed of Trust. Maker's liability under this Note extends only to the Trust Property and the improvements thereon. County shall not (i) seek nor obtain judgment against Maker, or any general partner or limited partner of Maker or its successors or assigns, or (ii) enforce such liability against any other asset, property or funds of Maker for payment of principal or interest under this Note following a trustee's sale or judicial foreclosure of the Deed of Trust. County acknowledges that its sole recourse against Maker or any general partner or limited partner of Maker or its successors and assigns, for any

default in obligations hereunder is limited to Maker's, any general partner's or limited partner's interest (if any) in the Trust Property.

Default: In the event of any default in the payment of this Note or breach of any terms of the CC&Rs or of the Contract, County may, after the giving of written notice in the manner provided in the Deed of Trust and the expiration of any cure period therein provided, if the default is not then cured, accelerate and declare the unpaid principal of this Note, together with twelve percent (12%) interest on all unpaid balances hereunder, immediately due and payable without notice, and to foreclose the Deed of Trust by judicial or non-judicial foreclosure.

Delay in Exercising Rights: No delay or omission on the part of County in exercising any right under this Note, the Deed of Trust, the CC&Rs, or the Contract operates as a waiver of such right or any other right under this Note, the Deed of Trust, the CC&Rs, or the Contract. To the extent permitted by law, Maker waives the right in any action on this Note to assert that such action was not commenced within the time required by law for such commencement.

Any failure by County to insist upon, or any election by County not to insist upon strict performance by Maker of any covenant, agreement, term, provision, condition or obligation hereof does not create an estoppel as to County's future right to insist upon strict performance, and is not a waiver of same or of any other covenant, agreement term, provision, condition or obligation hereof. County has the right at any time or times thereafter to insist upon strict performance by Maker of any and all such covenants, agreements, terms, provisions, conditions and obligations.

Costs and Attorney's Fees: Upon this Note becoming due or being declared due and upon the same being placed in the hands of attorneys for collection, Maker will pay a reasonable amount as attorney's fees and costs.

Notices: All notices required or permitted to be given under this Note must be in writing and will be considered duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

COUNTY:

Pima County Community
Development and Neighborhood
Conservation Department
Margaret Kish, Director
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

With a copy to:

Betty Villegas, Affordable Housing
Program Manager
801 W. Congress Street
Tucson, AZ 85745

CONTRACTOR:

Epidaurus
Rod Mullen, President and CEO
P.O. Box 3043
Tucson, AZ 85702-3043

With copies to:

Epidaurus dba Amity Foundation
Ray Clarke, Vice President
146 E. Broadway
Tucson, AZ 85701

Epidaurus dba Amity Foundation
Mike Salazar, Asset Manager
10500 E. Tanque Verde Road
Tucson, AZ 85749

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this section.

Insurance: Maker will insure the Trust Property and the Project with an insurer acceptable to County. The insurance must be maintained until all of the secured obligations under this Note are paid in full. Maker will cause County to be named as loss payee or mortgagee so that any benefits arising from the insured risks will be paid to County and applied to the secured obligations evidenced by the Note. In the event of loss or damage to the Trust Property, County may require additional security or assurance of payment before allowing any insurance benefits to be used to repair or replace the Project improvements on the Trust Property.

Binding on Successors and Assigns: The covenants, agreements, terms, provisions, conditions and obligations contained in this Note bind the successors and assigns of Maker and inure to the benefit of County. To the extent permitted by law, Maker waives diligence, demand, notice, presentment, notice of dishonor, notice of non-payment, grace, notice of protest and notice of intent to accelerate the maturity of this Note and the defense of any statute of limitations, and any other exemptions involving laws. This waiver is binding upon Maker and upon Maker's heirs, successors and assigns.

Severability: If any provision of this Note is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, this Note will be construed not to contain that provision or provisions and all other provisions of this Note will remain in full force and effect. To this end, the provisions of this Note are severable.

IN WITNESS WHEREOF, Maker has executed this Note as of the first date written below.

Signed this _____ day of _____, 2013.

Maker: Epidaurus, a California non-profit corporation operating in Pima County, Arizona under the trade name "Amity Foundation".

By: _____

Its _____

ACKNOWLEDGEMENT

STATE OF ARIZONA)
) S.S.
COUNTY OF PIMA)

Subscribed and sworn to before me this _____ day of _____, 2013,

by _____ of Epidaurus,
a California non-profit corporation operating in Pima County, Arizona under the trade name "Amity Foundation".

Notary Public

My commission expires _____

ATTACHMENT 1

Parcel Description: Pima County Tax Parcel No. 133-01-025C

Physical Address: No situs address assigned
Tucson, Arizona

LEGAL DESCRIPTION

A PORTION OF THE NORTH HALF OF SECTION 1, TOWNSHIP 14 SOUTH, RANGE 15 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF **PARCEL 1**, AS SHOWN ON THE RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9, RECORDS OF THE PIMA COUNTY RECORDER, PIMA COUNTY, ARIZONA;

THENCE NORTH 00°15'19" EAST 231.01 FEET UPON THE WEST LINE OF **PARCEL 2** AS SHOWN ON SAID RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9;

THENCE SOUTH 90°00'00" EAST 205.11 FEET;

THENCE SOUTH 83°22'32" EAST 66.64 FEET;

THENCE NORTH 11°28'18" EAST 7.84 FEET;

THENCE SOUTH 90°00'00" EAST 126.61 FEET;

THENCE SOUTH 37°13'37" EAST 61.97 FEET;

THENCE SOUTH 00°00'00" WEST 42.70 FEET;

THENCE SOUTH 58°57'47" WEST 73.68 FEET;

THENCE SOUTH 49°48'10" WEST 26.02 FEET;

THENCE SOUTH 48°54'32" WEST 33.54 FEET;

THENCE SOUTH 03°54'28" WEST 50.72 FEET;

THENCE SOUTH 84°51'02" EAST 35.60 FEET;

THENCE SOUTH 04°19'09" WEST 235.88 FEET;

THENCE NORTH 89°44'41" WEST 344.96 FEET TO THE WEST LINE OF SAID

PARCEL 1;

THENCE NORTH 00°15'19" EAST 225.32 FEET UPON SAID WEST LINE TO THE **POINT OF BEGINNING.**

CONTAINING 168,656 SQUARE FEET OR 3.872 ACRES, MORE OR LESS.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
DRAGONFLY VILLAGE TRANSITIONAL HOUSING UNITS**

OWNER: Epidaurus, a foreign non-profit corporation incorporated in the State of California and operating in Pima County, Arizona under the trade name "Amity Foundation"

COUNTY: Pima County, a body politic and corporate of the State of Arizona

PROPERTY: CIRCLE TREE RANCH PTN PCL 1 & 2 RS 60/9 aka PTN SW4 NE4 NW4 3.87 acres SEC 1-14-15; Pima County Tax Parcel No. 133-01-025C; no situs address; specifically described in Attachment 1

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS IS MADE IN FAVOR OF COUNTY BY OWNER AND IS EVIDENCE OF OWNER'S AGREEMENT TO COMPLY WITH CERTAIN RESTRICTIONS IN CONSIDERATION OF RECEIVING A LOAN OF FEDERAL HOME PROGRAM GRANT FUNDS FOR USE IN THE DEVELOPMENT OF IMPROVEMENTS ON THE PROPERTY.

RECITALS

WHEREAS, Owner applied for grant funds available through the HOME Investment Partnerships Program as defined in Part 92 of title 24 of the Code of Federal Regulations, as amended, to construct transitional housing for the very low- and low-income homeless in Pima County; and

WHEREAS, Owner has been awarded a loan of HOME Program grant funds in the amount of \$500,000.00 from County under Pima County Contract No. CT-CD-13*662; and

WHEREAS, Owner must use these grant funds to construct a 30 unit, multi-family, rental housing complex with associated community facilities and common areas which shall be transitional housing for homeless individuals and families with household incomes at or below 60% of the area median income; and

WHEREAS, by entering into the contract and accepting the HOME Program grant funds, the transitional housing project will be subject to several restrictions and regulations established by the U.S. Department of Housing and Urban Development, including occupancy and rent restrictions, for at least 20 years; and

WHEREAS, the provisions contained in Part 92 of title 24 of the Code of Federal Regulations, as amended, are incorporated into this Declaration by this reference as if fully set forth herein; and

WHEREAS, Owner understands and agrees to comply with all such restrictions and regulations for the Affordability Period set forth herein.

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner hereby makes this Declaration and declares that the covenants, conditions and restrictions set forth herein shall run with the land, the parties agree as follows:

PART I: Definitions

The following words, phrases or terms used in this Declaration will have the following meanings:

1. **“Adjusted Income, Annual Income, Monthly Adjusted Income, Monthly Income”** means the household income of tenants or potential tenants calculated as prescribed in Part 813 of title 24 of the Code of Federal Regulations.
 2. **“Affordability Period”** means the time period during which the Property is subject to this Declaration, as specified in Part II, Paragraph 2 of this Declaration.
 3. **“AMI”** means Area Median Income as established by HUD.
 4. **“Declaration”** means this Declaration of Covenants, Conditions, and Restrictions for Dragonfly Village Transitional Housing Units
 5. **“Dragonfly Village”** means the 30-unit affordable rental, multi-family, transitional housing complex for homeless individuals and families, along with associated community buildings, that will be developed and operated by Owner on the Property.
 6. **“HOME Program”** means the HOME Investment Partnerships Program delineated in Part 92 of title 24 of the Code of Federal Regulations, as it currently exists and as it may be modified in the future.
 7. **“HOME-Assisted Units”** means those units designated as HOME-assisted under Part 92 of title 24 of the Code of Federal Regulations and attributed to the Tucson/Pima County HOME Consortium in Dragonfly Village and subject to the restrictions set forth herein.
 8. **“Floating HOME Units”** means the units within the Project that are designated as HOME-Assisted the identity of which may change over time, so long as the newly designated HOME-Assisted unit is comparable to other HOME-Assisted unit being replaced in number of bedrooms, bathrooms and amenities. “Floating HOME Units” is defined in 24 CFR § 92.252. The total number of HOME assisted units in the project may not be decreased.
 9. **“High HOME Rent”** means rent published by HUD based on the lower of 30% of 65% of adjusted area median income and fair market rent.
-
10. **“HOME Funds”** means funds made available under Part 92 of title 24 of the Code of Federal Regulations through allocations and reallocations, plus all repayments and interest or other return on the investment of these funds.
 11. **“HQS”** means HUD Housing Quality Standards set forth in 24 CFR 982.401.

12. **"HUD"** means the United States Department of Housing and Urban Development.

13. **"Initial Rent and Utility Allowance Schedules"** refer to the rent schedule and utility allowance schedules attached hereto as Attachment 3. The amounts set forth in these schedules are the minimum rent and utility allowances for the HOME-Assisted units throughout the Affordability Period. HUD may amend the rents and allowances to levels that fall below the initial rent schedule and utility allowances.

14. **"Loan Agreement"** means the Contract between Owner and County that establishes the terms and conditions for the receipt and use of the \$500,000.00 of HOME Program grant funds; Pima County Contract No. CT-CD-13*662.

15. **"Low HOME Rent"** means rent published by HUD based the lower of 30% of 50% of adjusted area median income; 30% of family's adjusted income; or, the High HOME Rent if the Low HOME Rent is greater.

16. **"Low-income household"** means households whose annual incomes do not exceed 80% AMI. HUD may establish income ceilings higher or lower than 80% AMI based on HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low household incomes.

17. **"Over-income tenants"** refer to tenant households whose incomes, after initial occupancy, equal or exceed 80% AMI.

18. **"Project"** means Dragonfly Village.

19. **"Project Completion"** means the filing of a final project completion report (form HUD-40087) as attached Exhibit F to the Loan Agreement and the final disbursement of HOME funds to Owner.

20. **"Tenant Participation Plan"** refers to the fair lease and grievance procedure developed by Owner and provided to County that provides for and follows a program of tenant participation in management decisions.

21. **"Transitional Housing"** means housing that:

- a. Is designed to provide housing and appropriate supportive services to homeless individuals, homeless individuals with disabilities, and homeless families with children; and
- b. Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the participating jurisdiction or project owner before occupancy.

22. **"UPCS"** means the Uniform Physical Condition Standards established by HUD as provided in the Final Rule published in the Federal Register in Vol. 65, No. 237, Friday, December 8, 2000 (24 CFR Parts 5 and 200), Docket No. FR-4452-F-02.

23. **"Very Low-Income Households"** means households whose annual incomes do not exceed 50% AMI. HUD may establish income ceilings higher or lower than 50% based on HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low household incomes.

PART II: Covenants, Conditions and Restrictions

In order to retain its classification as a housing project which qualifies as affordable housing for the purposes of the HOME Program, through the term of the Affordability Period, the following restrictions apply to the Project:

1. HOME-Assisted Units: Five (5) of the 30 rental units in the Project shall be designated as County HOME-Assisted Units for homeless individuals and families meeting income eligibility standards specified below. For these five units, the following apply:

- a. Two (2) will be one bedroom, one bath units.
- b. Two (2) will be two bedroom, two bath units.
- c. One (1) will be a three bedroom, three bath unit.
- d. At least one (1) of the one bedroom units will be designated for rent to homeless individuals or families with household earnings, at initial occupancy, at or below 50% AMI for the Affordability Period. The remaining units will be designated for rent to homeless individuals or families with household earnings at or below 60% AMI at initial occupancy.
- e. All five (5) units will be “floating” for purposes of compliance with the above restrictions.

2. Affordability Period: The HOME-Assisted Units shall be rented under the restrictions set forth below for **twenty (20) years** from the date of first occupancy of the last HOME-assisted unit to be occupied.

3. Use of Property: All five (5) of the HOME-Assisted units shall:

- a. Be rented or available for rent exclusively to homeless individuals or families with household incomes that does not exceed the income limits set forth in Part II, Paragraph 1(d); and
- b. Continue to be HOME-Assisted and remain affordable, pursuant to the Loan Agreement, Deed of Trust and this Declaration’s covenants which shall run with the land, regardless of any change in ownership.

4. Rent Limitation: All five (5) of the HOME-Assisted Units in the Project shall bear rents the lesser of fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR § 888.111 or:

- a. For the four (4) HOME-Assisted Units designated for rent to households with earnings at or below 60% AMI, the High HOME rent determined and published annually by HUD.
- b. For the one (1) unit designated for rent to a household with earnings at or below 50% AMI, the Low HOME determined and published annually by HUD.
- c. In determining the maximum monthly rent that may be charged for a unit that is subject to the limitations above, Owner must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant, as is provided in Part II, Paragraph 5.

5. Rent Schedule and Utility Allowances: The County must review and approve:

- a. Rents proposed by Owner for all HOME-Assisted Units:
 - i. Subject to the maximum rent limitations as described herein and in 24 CFR § 92.252; and
 - ii. Subject to the maximum rent limitations.
- b. The monthly allowances proposed by Owner for utilities and services to be paid by the tenant.
- c. The maximum monthly rent as established by HUD.
- d. Any change in rent or utility allowances which Owner believes is warranted by changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services. Rent may not be increased until the end of the then current lease term and Owner must provide tenants with not less than 30 days prior written notice before implementing any increase in rents.

6. Tenant Income Limitations: Pursuant to 24 CFR § 92.203, the income of each potential tenant must be determined prior to occupancy and must be certified by Owner on an annual basis in accordance 24 CFR § 92.252. Owner must certify each tenant's household income in compliance with HUD income eligibility criteria and the criteria set forth in Part II, Paragraph 1(d) on a form or forms to be approved by County. Owner must maintain records that document the income eligibility of each tenant household. Owners may not refuse to lease HOME-Assisted units to a certificate or voucher holder under the Section 8 Program because of the status of the prospective tenant as a holder of such certificate, voucher or comparable document.

7. Increases in Tenant Income: Owner must re-examine the income of each tenant household living in a HOME-Assisted Unit annually.

- a. The Project will continue to be considered affordable housing if there is temporary non-compliance with Paragraphs II(1)(d), (2) and (3) and 24 CFR § 92.252, paragraphs (a) or (b) if the non-compliance:
 - i. Is due to an increase in the household income of an existing tenant; and
 - ii. Owner is taking actions satisfactory to HUD to ensure that all vacancies are filled in accordance with 24 CFR §92.252, paragraph (i) until the non-compliance is corrected.
- b. If, at the annual review, a tenant's household income exceeds the limits set forth in Paragraph II(1)(d), that tenant must pay rent that is the lesser of fair market value or 30% of the household's adjusted monthly income. However, this requirement will not apply for units with funding under 24 CFR Part 92 and allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

8. Property Standards: Owner must maintain the Project in accordance with all applicable state and local codes, zoning, and ordinances, HQS and UPCS.

9. Tenant and Participant Protections: All HOME-Assisted Units in the Project shall comply with the following:

- a. The lease must be for not less than one year, unless by mutual agreement between the tenant and the owner.
 - b. The following lease terms are **prohibited**:
 - i. Agreement to be Sued: Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
 - ii. Treatment of the Property: Agreement by the tenant that Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit. In that event, Owner may dispose of this personal property in accordance with state law;
 - iii. Excusing Owner From Responsibility: Agreement by the tenant not to hold Owner or Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
 - iv. Waiver of Notice: Agreement of the tenant that Owner may institute a lawsuit without notice to the tenant;
 - v. Waiver of Legal Proceedings: Agreement by the tenant that Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
 - vi. Waiver of a Jury Trial: Agreement by the tenant to waive any right to a trial by jury;
 - vii. Waiver of right to appeal court decision: Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
 - viii. Tenant Chargeable With Cost of Legal Actions Regardless of Outcome: Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
 - c. As transitional housing, it is anticipated that the total length of tenancy shall be no more than two (2) years, unless otherwise agreed to by County.
-
- d. Owner shall not refuse to lease a HOME-assisted Unit on the basis that the prospective tenant is a holder of a Rental Vouch Program certificate of family participation under 24 CFR part 887 or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program.

e. Termination of Tenancy: Owner may not terminate the tenancy or refuse to renew the lease of a tenant of a HOME -assisted unit for the Project except when:

- i. Tenant has reached the end of their transitional housing term as specified in the lease;
- ii. For serious or repeated violations of the terms and conditions of the lease; or
- iii. For violation of applicable federal, state, or local laws.

Any termination or refusal to renew must be preceded by Owner's service upon the tenant of at least 30 days advance written notice specifying the grounds for the action.

f. Tenant Selection: Owner of the Project must adopt written tenant selection policies and criteria that:

- i. Are consistent with the purpose of providing housing for homeless individuals and families with household incomes at the levels set forth in Paragraph II(1)(d);
- ii. Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;
- iii. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
- iv. Provide for the prompt written notification to any rejected applicant explaining the grounds for any rejection.

10. Tenant Participation Plan: Owner must establish and maintain a Tenant Participation Plan to ensure tenants are involved in the management and decision-making of the property and fair lease and grievance procedures as provided by 24 CFR § 92.303.

11. Religious Organizations: The Project will not be provided for rental or use to any primarily religious organizations, such as churches, for any activity including secular activities. The completed housing project must be used exclusively by Owner for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the Project.

12. Affirmative Marketing: For all HOME-Assisted Units in the Project:

- a. Owner shall comply with the following Affirmative marketing requirements and procedures:
 - i. All correspondence and notices shall contain either the Equal Housing Opportunity logo or slogan. The logo is available on HUD's website at:

<http://portal.hud.gov/hudportal/HUD?src=/library/bookshelf/11/hudgraphics/fheologo>

- i. Prominently display Equal Opportunity Fair Housing Posters in English and Spanish in all leasing and housing counseling offices. The posters are available on HUD's website at:

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7802.pdf or by contacting County.

- ii. Advertise availability of HOME-Assisted Units in minority-owned newspapers, on minority radio and/ or television stations and with other local and affiliate newspapers, television and radio stations.
 - iii. Include the equal housing opportunity logo or slogan in all advertisements.
 - iv. Solicit applications for vacant HOME-Assisted Units from the homeless population, particularly to persons who are least likely to apply for the HOME-Assisted Units absent special outreach efforts. In general, persons who are not of the race/ethnicity of the residents in the neighborhood surrounding the Project, as indicated in U.S. Census documents, shall be considered those least likely to apply.
 - v. Use available resources to reach potential clients, including, but not limited to:
 - 1) Community organizations
 - 2) Housing counseling agencies
 - 3) Places of worship
 - 4) Social service centers
 - 5) Tucson-Pima Coalition to End Homelessness
 - 6) Homeless service centers and shelters
 - 7) Employment centers
 - 8) Medical service centers
 - 9) Fair housing groups
 - vi. Maintain files containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letters ...) and the results of these various marketing efforts. All such documentation shall be available for inspection by County.
 - vii. Maintain a listing of all tenants residing in each HOME-Assisted Unit at the time of application submittal through the end of the compliance period.
- b. County will assess the following activities by Owner:
- i. Affirmative marketing efforts; by comparing predetermined occupancy goals (based upon the area from which potential tenants will be drawn) to actual occupancy data that Owner is required to maintain.
 - ii. Outreach efforts; by reviewing marketing efforts.
 - iii. Marketing efforts during the rent-up period and marketing of the HOME-Assisted Units by use of, at a minimum, an annual compliance certification or personal monitoring visit to the Project.

- c. Should Owner fail to follow the affirmative marketing requirements, corrective actions County deems appropriate shall be taken including, but is not limited to, requiring more extensive outreach efforts to appropriate contacts to achieve occupancy goals.

13. Period of Record Retention: All pertinent documents, books, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, income examinations, and other records relating to the project and Property specified herein shall be retained for five (5) years following expiration of the Affordability Period set forth in this Declaration. Notwithstanding the foregoing, if any litigation, claim, negotiation, audit, or other action has been started before the expiration of the period of affordability specified herein, the records must be retained for five years following completion of the action and resolution of all issues which arise from it, or for five years following the end of the Affordability Period, whichever is later.

14. Inspection and Audit of Records: Owner shall make available at all reasonable times, for inspection, transcription, excerpting, examination, copying, and audit by County, the State, the State Auditor General, HUD, the Comptroller General of the United States, or any of their representatives and designees, all pertinent books, documents, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, income examinations, and other records (hereinafter referred to as "Records") relating to the Project and Property specified herein. Upon request by such inspecting or auditing entity, a legible copy of all such Records shall be produced by the owner at the specified office of Commerce, the County, the State, the State Auditor General, or at any other reasonable location. The original of all such Records shall also be available and produced for inspection, copying, and audit when needed to verify the authenticity of a copy.

15. HOME Program Required Reports: Owner shall file an annual report as set forth in the Loan Agreement with County in a format approved by County demonstrating compliance with the HOME Program and this Declaration. The annual report shall include the following:

- a. Records demonstrating that each household renting the HOME-assisted units was income eligible at the time of leasing and annually thereafter.
- b. Records demonstrating compliance with the Rent and Income Limitation clause of this Declaration.
- c. Records demonstrating compliance with the Affirmative Marketing clause of this Declaration.
- d. Records documenting the extent to which each racial and ethnic group and single head of households (by gender of household head) have applied for, participated in, or benefited from any part of the Project paid for with HOME Funds.

16. Occupancy of HOME-Assisted units: The employees of the Owner are covered persons under 24 CFR § 92.356(f) and, therefore, are prohibited from occupying a HOME-Assisted Unit in the Project. ~~However, on a case-by-case basis, County could consider granting an exception to the prohibition so long as circumstances warrant and the exception is permitted by the HOME regulations.~~

17. Program Income: Any program income as defined in the Loan Agreement shall be returned to County as specified therein.

PART III: Remedies

1. Remedies of the County:

- a. If Owner breaches any covenant, condition, or restriction set forth herein, and if such breach remains uncured for a period of sixty (60) days after notice of the breach has been given by County (or for an extended period approved in writing by County), County shall be entitled to any or all of the following remedies:
 - i. Return of all HOME Funds provided for the Project, plus interest at the maximum rate permitted by law, and an amount attributable to the increase in equity in the Property attributable to the use of the HOME Funds;
 - ii. Resort to any court having jurisdiction of the subject matter for specific performance of this Declaration, for an injunction against any violation of this Declaration, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Declaration, or for initiation of foreclosure proceedings; or
 - iii. Such other relief as may be appropriate, it being acknowledged by Owner that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's breach of this Declaration, because the beneficiaries include the very low income and low-income households to be benefited by Owner's use of HOME Funds.
- b. County shall be entitled to reimbursement of reasonable attorneys' fees and all costs incurred in any such judicial action in which the County shall prevail.
- c. County shall require reasonable assurances of security for repayments required pursuant to this section in the form of the Deed of Trust appended to the Loan Agreement assigning a beneficial interest for the Project to County, which Owner shall execute as part of this Declaration.

2. Remedies are Cumulative: Each right, power and remedy of County provided for in this Declaration, now or hereafter existing at law or in equity or by statute or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Declaration or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by County of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by County of any or all such other rights, powers or remedies.

3. Remedies of Other Parties: The occupancy requirements set forth in this Declaration also shall ~~inure to the benefit of, and may be judicially enforced against Owner by affected households who are,~~ or were, eligible for the HOME-Assisted Units. Any such party that prevails in such judicial action against Owner shall be entitled to reimbursement of its reasonable attorneys' fees and costs.

PART IV: Representations and Warranties Of Owner

1. Valid Execution: Owner represents and warrants that Owner has validly executed this Declaration and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity to:

- a. Enter into this Declaration;
- b. Carry out Owner's obligations as described in this Declaration; and
- c. Assume responsibility for compliance with all applicable federal, State and local laws, codes, ordinances, rules and regulations.

2. No Conflict or Contractual Violation: To the best of Owner's knowledge, the making of this Declaration and Owner's obligations hereunder:

- a. Will not violate any contractual covenants or restrictions between Owner and any third party or any such covenants or restrictions affecting the Property;
- b. Will not conflict with any of the instruments that create or establish Owner's authority;
- c. Will not conflict with any applicable public or private restrictions;
- d. Do not require any consent or approval of any public or private authority which has not already been obtained; and
- e. Are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against:
 - i. Owner, without regard to capacity;
 - ii. Any person with whom Owner may be jointly or severally liable; or
 - iii. The Property or any part thereof.

3. No Litigation: No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Declaration.

4. No Bankruptcy: There is no pending or, to Owner's best knowledge, threatened any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for owner under any federal, state or other statute, law, or regulation relating to bankruptcy, insolvency or relief for debtors.

5. No Encumbrances or Attachment: Owner shall not allow the Property to be attached in any manner, including, but not limited to, any liens or other encumbrances or any mortgages or other

~~security interest, except for those liens and encumbrances set forth in Attachment 2 to this Declaration,~~
without the prior written consent of the County.

6. Indemnification: Owner agrees to indemnify, defend and hold harmless the County from and against all liabilities, losses, claims, damages, demands, suits, liens, judgments, reasonable attorney's fees, costs and expenses incurred by the County as a result of any material inaccuracy in any of the representations and warranties contained in this Part IV.

PART V: Miscellaneous

1. Binding Effect; Covenants Running With the Land: During the Affordability Period, this Declaration and the covenants, conditions and restrictions contained herein shall be deemed to be covenants running with the land for the benefit of Pima County and its successors, and shall pass to and be binding upon Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Declaration and the covenants, conditions and restrictions shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Affordability Period and in accordance with the terms hereof said covenants, conditions and restrictions shall expire. Each and every agreement, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions, and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such agreement, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, conditions and restrictions shall run to each portion of the Property.

2. Recordation: Owner, at its cost and expense, shall cause this Declaration to be duly recorded or filed and re-recorded or re-filed in the Office of the Pima County Recorder and such other places as appropriate, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of County to enforce this Declaration.

3. Amendments: This Declaration may not be amended or modified except by a written instrument signed by each party hereto and recorded or filed as this Declaration was recorded or filed.

4. Notices: All notices required or permitted to be given pursuant to this Declaration must be in writing and will be deemed to have been duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

COUNTY:

Pima County Community
Development and Neighborhood
Conservation Department
Margaret Kish, Director
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

CONTRACTOR:

EPIDAURUS
Rod Mullen, President and CEO
P.O. Box 3043
Tucson, AZ 85702-3043

With copies to:

With a copy to:

Betty Villegas, Affordable Housing
Program Manager
801 W. Congress Street
Tucson, AZ 85745

Epidaurus dba Amity Foundation
Ray Clarke, Vice President
146 E. Broadway
Tucson, AZ 85701

Epidaurus dba Amity Foundation
Mike Salazar, Asset Manager
10500 E. Tanque Verde Road
Tucson, AZ 85749

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this section.

5. Compliance With Laws, Permits and Certifications: Owner shall comply with all federal, state and local laws, codes, ordinances, rules, and regulations, conditions and assurances and shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required in regard to the Property.

6. Governing Law: This Declaration, as it may affect the rights, remedies and obligations of the County, shall be governed by and construed in accordance with federal law. Insofar as federal law does not apply, the provisions of this Declaration shall be governed by and construed in accordance with the laws of the State of Arizona.

7. Severability: This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

8. Indemnification: Owner will protect, defend, indemnify, and hold harmless County from and against any and all liabilities, damages, demands, claims, suits, liens, and judgments of whatever nature including but not limited to claims for contribution or indemnification for injuries to or death of any person or persons caused by, in connection with, or arising out of any activities undertaken by Owner pursuant to this Declaration or any negligence of Owner relating to the project or the Property. Owner's obligation to protect, defend, indemnify, and hold harmless as set forth in this section shall include any and all attorneys' fees incurred by County in the defense or handling of said suits, demands, judgments, liens and claims and all attorneys' fees and investigation expenses incurred by County in enforcing or obtaining compliance with the provisions of this Declaration.

9. Section Titles: Section titles are for descriptive purposes only and shall not control or limit the meaning of this Declaration as set forth in the text.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

10. Entire Agreement: This Declaration and the Loan Agreement contain the entire understanding between the parties hereto with respect to the restrictions on the Property and Project. The Owner has executed a Real Estate Non-Recourse ("Note") secured by an Deed of Trust Assignment of Rents and Security Agreement ("Deed of Trust"), which Deed of Trust secures the obligations of this Declaration, the Loan Agreement, and the Note.

IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures as of the date listed below.

Pima County

Chair, Board of Supervisors

ATTEST:

Clerk of the Board

Epidaurus

Rod Mullen, President and Chief
Executive Officer

Ap

proved as to Content:

Margaret M. Kue
Director, Community Development and Neighborhood Conservation Department

Approved as to Form:

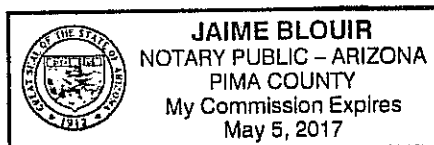
Karen S. Friar
Karen S. Friar, Deputy County Attorney

State of Arizona)
) ss
County of Pima)

Acknowledged before me on July 17, 2013, by
Rod Mullen, as President and Chief Executive Officer of Epidaurus, a
California non-profit corporation operating in Pima County, Arizona under the trade name
"Amity Foundation".

Jaime Blouir
Notary Public

My commission expires: May 5, 2017



ATTACHMENT 1

Parcel Description: Pima County Tax Parcel No. 133-01-025C

Physical Address: No situs address assigned
Tucson, Arizona

LEGAL DESCRIPTION

A PORTION OF THE NORTH HALF OF SECTION 1, TOWNSHIP 14 SOUTH, RANGE 15 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF **PARCEL 1**, AS SHOWN ON THE RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9, RECORDS OF THE PIMA COUNTY RECORDER, PIMA COUNTY, ARIZONA;

THENCE NORTH 00°15'19" EAST 231.01 FEET UPON THE WEST LINE OF **PARCEL 2** AS SHOWN ON SAID RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9;

THENCE SOUTH 90°00'00" EAST 205.11 FEET;

THENCE SOUTH 83°22'32" EAST 66.64 FEET;

THENCE NORTH 11°28'18" EAST 7.84 FEET;

THENCE SOUTH 90°00'00" EAST 126.61 FEET;

THENCE SOUTH 37°13'37" EAST 61.97 FEET;

THENCE SOUTH 00°00'00" WEST 42.70 FEET;

THENCE SOUTH 58°57'47" WEST 73.68 FEET;

THENCE SOUTH 49°48'10" WEST 26.02 FEET;

THENCE SOUTH 48°54'32" WEST 33.54 FEET;

THENCE SOUTH 03°54'28" WEST 50.72 FEET;

THENCE SOUTH 84°51'02" EAST 35.60 FEET;

THENCE SOUTH 04°19'09" WEST 235.88 FEET;

THENCE NORTH 89°44'41" WEST 344.96 FEET TO THE WEST LINE OF SAID

PARCEL 1;

THENCE NORTH 00°15'19" EAST 225.32 FEET UPON SAID WEST LINE TO THE **POINT OF BEGINNING.**

CONTAINING 168,656 SQUARE FEET OR 3.872 ACRES, MORE OR LESS.

ATTACHMENT 2

Permitted Encumbrances

1. The Federal Home Loan Bank of San Francisco's Affordable Housing Program (AHP) restriction agreement(s).
 2. Arizona Department of Housing (ADOH) restriction agreements for ADOH HOME and Housing Trust Funds.
 3. USDA Rural Development Loan restriction agreements.
-
-

ATTACHMENT 3

HOME PROGRAM RENT LIMITS AND UTILITY ALLOWANCE

HOME PROGRAM RENT LIMITS

2012 RENT LIMITS City of Tucson / Pima County Effective 01/20/2012

Table 1

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
LOW Home	\$528	\$566	\$680	\$785	\$876	\$966	\$1057
HIGH Home	\$570	\$670	\$860	\$987	\$1081	\$1175	\$1268

All rents must be adjusted for utility allowances established locally (see Table 2). The allowable rent is the applicable high or low rent less the utility allowance for those utilities paid by the tenant.

UTILITY ALLOWANCES City of Tucson / Pima County Effective 01/01/13

Table 2

SINGLE FAMILY/PATIO/MOBILE HOME

TYPE OF UTILITIES	DOLLARS PER MONTH					
BEDROOM SIZE	0	1	2	3	4	5
ELECTRICITY	\$15	21	26	31	39	45
ELECTRIC HEAT	28	38	48	58	72	82
ELECTRIC HOT WATER	13	18	23	28	35	39
ELECTRIC COOKING	4	6	7	9	11	13
EVAP. COOLING	7	10	13	16	20	23
A/C	17	23	30	37	47	53
GAS HEAT	16	20	24	28	33	37
GAS HOT WATER	7	9	10	12	14	16
GAS COOKING	3	3	4	4	5	6
WATER/SEWER (City)	51	63	78	94	133	160
TRASH (CITY)	17	17	17	17	17	17
TRASH (COUNTY ONLY)	20	20	20	20	20	20
REFRIGERATOR	4	4	4	4	4	4
RANGE	3	3	3	3	3	3
PROPANE HEAT	23	32	41	50	64	73
PROPANE HOT WATER	10	14	18	22	27	31
PROPANE COOKING	4	5	7	8	10	12

APARTMENT/CONDO/TOWNHOUSE

TYPE OF UTILITIES	DOLLARS PER MONTH					
BEDROOM SIZE	0	1	2	3	4	5
ELECTRICITY	\$13	18	23	27	34	39
ELECTRIC HEAT	25	33	42	51	63	72
ELECTRIC HOT WATER	12	16	20	24	30	34
ELECTRIC COOKING	4	5	6	8	10	11
EVAP. COOLING	6	8	11	13	17	19
A/C	14	20	26	31	40	46
GAS HEAT	16	19	23	27	33	36
GAS HOT WATER	7	8	10	12	14	16
GAS COOKING	2	3	4	4	5	6
WATER/SEWER	48	59	71	85	114	138
TRASH (CITY)	17	17	17	17	17	17
TRASH (COUNTY)	20	20	20	20	20	20
REFRIGERATOR	4	4	4	4	4	4
RANGE	3	3	3	3	3	3
Propane Heat	23	32	41	50	64	73
Propane Hot Water	10	14	18	22	27	31
Propane Cooking	4	5	7	8	10	12

APPLYING RENT AND INCOME LIMITS TO YOUR PROJECT

Annually, HUD publishes Fair Market Rents and calculations of rents affordable to families earning 65 percent and 50 percent of median income (see Table 1). Low and High HOME rents are determined based on these figures. (See the HOME regulations for a detailed explanation of how these are determined.) Following is a step-by-step guide to applying the High and Low HOME rent limits to your project. Note that the requirements vary depending on the number of HOME-assisted units.

1 TO 4 HOME-ASSISTED UNITS:

For projects with 1 to 4 HOME-assisted rental units, the following requirements apply:

Rent Limits:

- All HOME-assisted units must have rents at or less than the High HOME Rent (see Table 3), adjusted for utility allowances.

Table 3

HIGH HOME	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
RENT	\$570	\$670	\$860	\$987	\$1081	\$1175	\$1268

Income Limits:

- All HOME-assisted units must be rented to families at or less than 80% of median income.
1 Person family \$33,850 4 Person family \$48,300 7 Person family \$59,900
2 Person family \$38,650 5 Person family \$52,200 8 Person family \$63,800
3 Person family \$43,500 6 Person family \$56,050

5 OR MORE HOME-ASSISTED UNITS:

For projects with 5 or more HOME-assisted rental units, the following requirements apply:

Rent Limits:

- 20% of the HOME-assisted units must have rents at or less than the Low HOME Rent (see Table 4), adjusted for utility allowances.

Table 4

LOW HOME	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
RENT	\$528	\$566	\$680	\$785	\$876	\$966	\$1057

- The remaining 80% of HOME-assisted units must have rents at or less than the High HOME Rent (see Table 5), adjusted for utility allowances.

Table 5

HIGH HOME	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
RENT	\$570	\$670	\$860	\$987	\$1081	\$1175	\$1268

Income Limits:

- All HOME-assisted units must be rented to families at or below 80% of median income:
1 Person family \$33,850 4 Person family \$48,300 7 Person family \$59,900
2 Person family \$38,650 5 Person family \$52,200 8 Person family \$63,800
3 Person family \$43,500 6 Person family \$56,050
- 90% of the total number of HOME-assisted units must be rented to families at or below 60% of median income:
1 Person family \$25,380 4 Person family \$36,240 7 Person family \$44,940
2 Person family \$29,040 5 Person family \$39,180 8 Person family \$47,880
3 Person family \$32,640 6 Person family \$42,060
- 20% of the total number of HOME-assisted units must be rented to families at or below 50% of median income. These same units must have rents at or less than the Low HOME Rent (see table 4), adjusted for utility allowances. These units can be the same units that count toward the 90% requirement above.
1 Person family \$21,150 4 Person family \$30,200 7 Person family \$37,450
2 Person family \$24,200 5 Person family \$32,650 8 Person family \$39,900
3 Person family \$27,200 6 Person family \$35,050