



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 01/07/25

* = Mandatory, information must be provided

or Procurement Director Award:

***Contractor/Vendor Name/Grantor (DBA):**

Desert Dove Apartments, LP

***Project Title/Description:**

Desert Dove Apartments

***Purpose:**

In support of Board of Supervisors Policy- Prosperity Initiative priorities 1 and 2, this Gap Funding Agreement is among Pima County, and Desert Dove Apartments, LP, an Arizona limited partnership to effectuate the award of \$1,000,000.00 in gap funding from the Regional Affordable Housing allocation toward the Desert Dove Apartments project. The project consists of a total of 64 rental units of multifamily housing located in the City of Tucson. The Project is situated on a portion of one parcel identified by Pima County Assessor Parcel Number 137-27-629B. This is a 30 year loan in the amount of \$1,000,000.00 to Desert Dove Apartments, L.P. and will be repaid with 2% interest. Note: the principal sum \$1,000,000.00 with interest at two percent 2% per annum for a total of \$1,600,000.00.

***Procurement Method:**

Request for solicitation No. CWD-RFP-AHF-RFP-02-2023

***Program Goals/Predicted Outcomes:**

The Desert Dove Apartment project will increase the supply of affordable housing in Pima County with a new construction complex of consisting of 64 rental units of affordable housing. The project is located at 6175 S. Midvale Park Road, Tucson, AZ are in the City of Tucson. Desert Dove Apartments consists of 4 residential buildings and one community room. Parking will consist of 122 on grade spaces with 10% of those spaces reserved for electric vehicles. Apartment units will feature a mix of 16, one-bedroom units, 32, two-bedroom units, and 16, three-bedroom units and target families with income from 40% to 60% Area Median Income (AMI). One-bedroom units will start with gross rents of \$670 per month up to \$1,004 per month, not including utility allowance. Two-bedroom units will start at \$804 per month and go up to \$1,206 per month. Three-bedroom units will start at \$928 per month and go up to \$1,392 per month. The average unit sizes will be 600 square feet for one-bedroom units, 800 square feet for two-bedroom units, and 1,050 square feet for three-bedroom units.

This is a an revenue contract CT2400000062 referring to expense contract PO2400011991.

Attached: Contract No. CT2400000062 (for payments from Vendor)

***Public Benefit:**

This project will increase the supply of quality, affordable homes in Pima County.

***Metrics Available to Measure Performance:**

Apartment units will feature a mix of 16, one-bedroom units, 32, two-bedroom units, and 16, three-bedroom units and target families with income from 40% to 60% Area Median Income (AMI).

***Retroactive:**

No.

TO: COB, 12-19-2024 (1)
Vers.: D
Pgs.: 38

DEC 19 24 PM 12:08 PD

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: CWD Contract Number (i.e., 15-123): CT2400000062
Commencement Date: 01/07/25 Termination Date: 12/31/26 Prior Contract Number (Synergen/CMS): N/A
Expense Amount \$ * Revenue Amount: \$ 1,600,000.00

*Funding Source(s) required: General Fund

Funding from General Fund? Yes No If Yes \$ 1,600,000.00 % 100

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):

Amendment No.: AMS Version No.:

Commencement Date: New Termination Date:

Prior Contract No. (Synergen/CMS):

Expense Revenue Increase Decrease

Amount This Amendment: \$

Is there revenue included? Yes No If Yes \$

*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):

Commencement Date: Termination Date: Amendment Number:

Match Amount: \$ Revenue Amount: \$

*All Funding Source(s) required:

*Match funding from General Fund? Yes No If Yes \$ %

*Match funding from other sources? Yes No If Yes \$ %

*Funding Source:

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Sofia Blue

Department: Community and Workforce Development

Telephone: 520-724-7312

Department Director Signature: [Signature] Date: 12/11/2024

Deputy County Administrator Signature: [Signature] Date: 13 Dec 2024

County Administrator Signature: [Signature] Date: 12/13/2024

Pima County Department of Community and Workforce Development

Project: Desert Dove Apartments

Contractor: Desert Dove Apartments, LP

Amount: \$1,000,000.00

Contract No.: CT2400000062 / PO2400011991

Funding: General Fund

AFFORDABLE HOUSING GAP FUNDING AGREEMENT

Background and Purpose

- A. As part of Pima County's ("County") fiscal year ("FY") 2023-24 budget, the Pima County Board of Supervisors ("Board") allocated \$5 million toward increasing affordable housing in Pima County. The Board appointed a Pima County Regional Affordable Housing Commission ("Commission") to study and make recommendations on how to expend that funding. Among the Commission's recommendations was using the remaining balance from FY 2022-23 and FY 2023-24 allocation, totaling \$6.875 million to provide "gap funding" for development or preservation of affordable housing.
- B. County staff, with Commission comment and approval, developed and issued a Request for Proposals ("RFP"), CWD-RFP-AHF-RFP-02-2023, to solicit proposals for projects to seek gap funding. Twenty-one proposals were received, seeking a total of \$15,645,977.22 in funding. The proposals were scored by a panel with expertise in diverse areas, including housing, development, community development, and finance based on criteria set forth in the RFP. The panel also included Commission representation from a non-conflicted commissioner. The panel recommended funding ten projects: (1) West Point Apartments, La Frontera Partners, \$1 million; (2) Belvedere Terrace, LP, Newport SW LLC., \$1 million; (3) Desert Dove Apartments, GHK Properties, LLC., \$1 million; (4) The Safford, Marana Leased Housing Associates, LLLP, Dominion, \$1 million; (5) Tucson House, City of Tucson, \$1 million; (6) Emery Park Place, Family Housing Resources, \$750,000.00; (7) El Camino Affordable Housing, Casa Maria, Compass Affordable Housing, \$375,000.00; (8) Barrio Anita Casitas, Pima County Community Land Trust, \$234,316.00; (9) Rio Azul Apartments, Southwest Nonprofit Housing Corporation, \$1 million; and (10) Mars Landing, Habitat for Humanity Tucson, \$1 million.
- C. The Commission unanimously endorsed staff's recommendations. On March 5, 2024, the Board approved staff's and the Commission's recommendations, awarding funding to the ten recommended projects in the amounts requested.

- D. This Gap Funding Agreement ("Agreement") is among County, and Desert Dove Apartments, LP, an Arizona limited partnership ("Owner (collectively, "the Parties"), to effectuate the award of \$1,000,000.00 in gap funding ("Gap Funding") toward the Desert Dove Apartments ("Project").
- E. Owner submitted a Gap Funding Application for the use of County funds for direct construction costs for the Project.
- F. The Project consists of a total of 64 rental units of multifamily housing located in the City of Tucson. The Project is situated on a portion of one parcel identified by Pima County Assessor Parcel Number 137-27-629B ("Project Property").
- G. A description of the Project is attached as **Exhibit A**; a legal description and a map depicting the Project are attached as **Exhibit B**.
- H. The Project Property will be owned by Owner as of the Effective Date.

Agreement

1. **Term.** This Agreement commences on the date of the last Party to sign (the "Effective Date") and terminates on December 31, 2026, the anticipated date the project will be placed in service. Notwithstanding this section, Sections 4, 7, and 8 of this Agreement survive termination and remain in effect so long as the Affordability Restrictions remain in effect.
2. **Payment and Terms of Gap Funding.**
 - 2.1. **Gap Funding Total.** County will pay Owner an amount not to exceed \$1,000,000.00.
 - 2.2. **Gap Funding Terms.** Gap Funds will be provided as a loan subject to the terms of the County Gap Funding Promissory Note ("**County Note**") which will be secured by a Pima County Gap Funding Deed of Trust and Assignment of Rents ("**County DOT**"), both of which are attached as Exhibit C. The Owner will record the County DOT as indicated in paragraph 3. of this Agreement.
 - 2.3. **Timing of Invoices.** Unless otherwise agreed, Owner will submit invoices monthly. County must receive invoices no more than 30 days after the end of the billing period in which Owner delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Owner does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.
 - 2.4. **Content of Invoices.** All invoices will be accompanied by a narrative description of the work performed during the period covered by the invoice, time accounting information and an allocation of all direct costs, including reimbursable costs to County. Owner charges must be supported by appropriate documentation with each separate invoice submitted. Owner will

provide a project narrative as it applies to the project timeline with each invoice.

- 2.5. **Invoice Adjustments.** Owner applied for Gap funding for direct construction costs. County will adjust invoices at a reimbursement rate of not less than 90% until the project meets half of their construction timeline. After the halfway milestone is reached, the County will adjust its reimbursement rate to 95%.
 - 2.6. **County Review.** County will review the invoice and, within 15 days, either approve it or reject it, which such approval shall not be unreasonably withheld, conditioned, or delayed. If approved, County will pay Owner the amount requested within 15 days of the date of the invoice. If rejected, County will provide Owner with a written response including the reasons for the rejection, and Owner may submit a new invoice to correct any deficiencies.
 - 2.7. **After Project completion,** Owner will submit a final invoice for the remaining Gap Funding amount. Owner must include with the final invoice documentation demonstrating full Project completion, including a project completion report, final Certificates of Occupancy issued by the City of Tucson, final payment lien waivers from the general contractor and all subcontractors. County will review the invoice and, within 15 days, either approve it or reject it. If approved, County will pay Owner the amount requested within 15 days of the date of the invoice. If rejected, County will provide Owner with a written response including the reasons for the rejection, and Owner may submit a new invoice to correct any deficiencies.
3. **Affordability Restriction.** No later than 30 days after this Agreement is fully executed, Owner will record Affordability Restrictions against the Project Property in substantially the form attached as **Exhibit D**. The Affordability Restrictions shall be recorded before the County DOT is recorded and Owner will provide copies of the recorded Affordability Restrictions and County DOT to County.
 4. **Enforcement.** County may enforce the Affordability Restrictions in accordance with their terms at any time during which they are in effect.
 5. **Marketing Plan.** Owner will market the Project in accordance with the previously submitted Marketing Plan.
 6. **Assignment.** Owner may not assign its obligations under this Agreement without the written consent of County, which it may grant or withhold in its sole discretion.
 7. **Insurance.** The Insurance Requirements herein are minimum requirements for this Agreement and in no way limit, the indemnity covenants contained in this Agreement. Owner's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII. Pima County in no way warrants that the minimum insurer rating is sufficient to protect the Owner from potential insurer insolvency.
 - 7.1. **Minimum Scope and Limits of Insurance.** Owner shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. Pima County in no way warrants

that the minimum insurance limits contained herein are sufficient to protect the Owner from liabilities that arise out of the performance of the work under this Agreement. If necessary, Owner may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

7.1.1. **Property** - Commercial Property insurance with coverage at least as broad as ISO form CP 00 01, covering full replacement cost of real property up to insurance limits.

7.1.2. **Commercial General Liability (CGL)** – Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

7.1.3. **Business Automobile Liability** – waived.

7.1.4. **Workers' Compensation (WC) and Employers' Liability** - Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer's Liability coverage- \$1,000,000 each accident and each person - disease.

Sole Proprietor: The Workers' Compensation requirement shall not apply to a contractor that is exempt under A.R.S. § 23-901, and when such contractor executes the appropriate "Pima County Sole Proprietor/Independent Contractor Waiver Form".

7.1.5. **Claims-Made Insurance Coverage.** If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Agreement, and Owner must maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

7.2. **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

7.2.1. **Additional Insured:** The General Liability Policy shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Owner.

7.2.2. **Subrogation:** The General Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Owner.

7.2.3. **Primary Insurance:** The Owner's policies shall stipulate that the insurance afforded the Owner shall be primary and that any insurance carried by Pima

County, its agents, officials, or employees shall be excess and not contributory insurance.

7.2.4. Insurance provided by the Owner shall not limit the Owner's liability assumed under the indemnification provisions of this Agreement.

7.3. **Notice of Cancellation.** Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice shall include the Pima County project or contract number and project description.

7.4. **Verification of Coverage.** Owner shall furnish Pima County with certificates of insurance as required by this Agreement. An authorized representative of the insurer shall sign the certificates.

7.4.1. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Agreement must be in effect at, or prior to, commencement of work under this Agreement. Failure to maintain the insurance coverages or policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.

7.4.2. All certificates required by this Agreement shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Agreement at any time.

7.5. **Approval and Modifications.** The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Agreement amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Owner, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

8. **Indemnification.** To the fullest extent permitted by law, Owner will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnatee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Owner. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Owner to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnatee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnatee, be indemnified by Owner from and against any and all Claims. Owner is responsible for primary loss investigation, defense and judgment costs for any Claim to which this

indemnity applies. This indemnity will survive the expiration or termination of this Agreement.

9. Laws and Regulations.

9.1. Compliance with Laws. Owner will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

9.2. Licensing. Owner individually warrants that it is appropriately licensed to provide the services under this Agreement and that its subcontractors will be appropriately licensed.

9.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Agreement. Any action relating to this Agreement must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

10. Independent Contractor. Owner is an independent contractor. Owner and Owner's officers, agents or employees will not be considered employees of Pima County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System. Owner is responsible for paying all federal, state and local taxes on the compensation received by them under this Agreement and will indemnify and hold County harmless from any and all liability that County may incur because of their failure to pay such taxes.

11. Subcontractors. Owner is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Owner is responsible for the acts and omissions of their own employees. Nothing in this Agreement creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

12. Non-Discrimination. Owner will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Agreement, Owner will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

13. Americans with Disabilities Act. Owner will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

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

15. Full and Complete Performance. The failure of any party to insist, in one or more instances, upon another party's complete and satisfactory performance under this Agreement, or to take any action based on another party's failure to completely and

satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Agreement, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

16. **Cancellation for Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
17. **Termination by County.** County may terminate this Agreement if Owner, or, at the option of Owner's Limited Partners, Owner's Limited Partners, fails to cure a default under this Agreement after more than 30 days after written notice of the default from County (or for a longer period as may be reasonably required under the circumstances to cure the violation, provided that Owner has commenced the cure within the initial 30-day period and thereafter diligently pursues the cure to completion).
18. **Remedies.** Any party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.
19. **Severability.** Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.
20. **Non-Exclusive Agreement.** Owner understands that this Agreement is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.
21. **Books and Records.** Owner will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Owner will retain all records relating to this Agreement for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
22. **Public Records.**
 - 22.1. **Disclosure.** Pursuant to A.R.S. § 39-121 et seq., all documents submitted in response to the solicitation resulting in award of this Agreement, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
 - 22.2. **Records Marked Confidential; Notice and Protective Order.** If Owner reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Owner must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Owner of the request as soon as reasonably possible. County will release the records 30 days after the date of that notice, unless Owner has, within that

period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

23. Legal Arizona Workers Act Compliance.

23.1. Compliance with Immigration Laws. Owner hereby warrants that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Owner will further ensure that each subcontractor who performs any work under this Agreement likewise complies with the State and Federal Immigration Laws.

23.2. Books & Records. County has the right at any time to inspect the books and records of Owner and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

23.3. Remedies for Breach of Warranty. Any breach of Owner's, or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Agreement subjecting Owner to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Owner will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Owner.

23.4. Subcontractors. Owner will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 23 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to

Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to ensure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

24. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:
Director, Pima County Community
& Workforce Development
2797 W. Ajo Way, 3rd Floor
Tucson, AZ 85713

Owner:
Desert Dove Apartments, LP
c/o GHK Desert Dove, LLC
12730 W. Windsor Avenue,
Avondale, AZ 85392

With copies to:

Fennemore Craig, P.C.
2394 E. Camelback Road
Suite 600
Phoenix, AZ 85016
Attention: Brett D. Siglin, Esq.

WH Desert Dove, LLC
515 N 162nd Avenue, Suite 202
Omaha, Nebraska 68118
Attn: Tom Stratman
MHEG Fund 58, LP
c/o Midwest Housing Equity Group
515 N. 162nd Street, Suite 202
Omaha, NE 68118
Attn: President

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Shane R. Deaver

Any party may update its contact for purposes of notices in writing at any time.

25. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Owner engages in for-profit activity and have 10 or more employees, and if this Agreement has a value of \$100,000.00 or more, Owner individually certifies that it is not currently engaged in and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
26. **Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394, if Owner engages in for-profit activity and has 10 or more employees, Owner individually certifies that it is not currently using, and agrees for the duration of this Agreement to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Owner becomes aware during the term of the Agreement that it is not in compliance with A.R.S. § 35-394, it must notify the County

within five business days and provide a written certification to County regarding compliance within one hundred eighty days.

27. **Heat Injury and Illness Prevention and Safety Plan.** Pursuant to Pima County Procurement Code 11.40.030, the Owner hereby warrants that if the employees of the Owner's general contractor and its subcontractors perform work in an outdoor environment under this Agreement, the Owner will keep on file a written Heat Injury and Illness Prevention and Safety Plan. At the County's request, the Owner will provide a copy of this plan and documentation of heat safety and mitigation efforts implemented by the Owner to prevent heat-related illnesses and injuries in the workplace. The Owner will post a copy of the Heat Injury and Illness Prevention and Safety Plan where it is accessible to employees. The Owner will further ensure that its general contractor and each of the general contractor's subcontractors that perform any work for the Owner under this Agreement complies with this provision.
28. **Amendments.** The parties may modify, amend, alter, or extend this Agreement only by a written amendment signed by the parties.
29. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which shall constitute one and the same instrument.
30. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Agreement supersedes all prior or contemporaneous agreements and understandings, oral or written.

The remainder of this page is intentionally left blank.

Signatures only on following page.

PIMA COUNTY:

Adelita S. Grijalva
Chair, Board of Supervisors

Dated: _____, 2024

ATTEST

Clerk of the Board

Approved as to Form:

Kyle Johnson

Deputy County Attorney

Approved as to Content:

[Signature]
for _____
Director, Community & Workforce
Development

OWNER:

DESERT DOVE APARTMENTS, LP, an
Arizona limited partnership

By: WH Desert Dove, LLC, its
general partner

By: W-Homes, LLC, its sole member

By: *Thomas J. Stratman*

Thomas J. Stratman
Its: Vice President

Dated: *Nov 25*, 2024

Exhibit A – Description of Project (1 page)

The Desert Dove Apartments is a new construction project, consisting of 64 rental units of affordable housing. The project is located at 6175 S. Midvale Park Road, Tucson, AZ are in the City of Tucson. The site of the development is centrally located off Midvale Park Road and just north of West Valencia Road.

Desert Dove Apartments, LP, owns approximately 2.676 acres of land identified by Pima County Assessor Parcel Number 137-27-629B. The property is zoned R-2 allowing a density of 15 units per acre and a height of up to 25 feet. The proposed property has been designed to be developed by right without the need for any variances or conditional use permits

Desert Dove Apartments consists of 4 residential buildings and one community room. The residential buildings will be Type-V buildings, and the community room will be a Type III building due to its public use. Parking will consist of 122 on grade spaces with 10% of those spaces reserved for electric vehicles. Apartment units will feature a mix of 16, one-bedroom units, 32, two-bedroom units, and 16, three-bedroom units and target families with incomes from 40% to 60% Area Median Income (AMI). One-bedroom units will start with gross rents of \$670 per month up to \$1,004 per month, not including utility allowance. Two-bedroom units will start at \$804 per month and go up to \$1,206 per month. Three-bedroom units will start at \$928 per month and go up to \$1,392 per month. The average unit sizes will be 600 square feet for one-bedroom units, 800 square feet for two-bedroom units, and 1,050 square feet for three-bedroom units.

Exhibit B – Legal Description and Depiction of Project (3 pages)

Legal Description

A PART OF A PARCEL DESCRIBED IN THE AMENDED PLAT OF LAUREL HEIGHTS SUBDIVISION, BOOK 40, PAGE 19, RECORDS OF PIMA COUNTY, ARIZONA, SITUATED IN A PART OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 15 SOUTH, RANGE 13 EAST OF THE GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 10, FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION 10, BEARS NORTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, A DISTANCE OF 2644.09 FEET;

THENCE UPON AND WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 10, NORTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, A DISTANCE OF 1281.72 FEET;

THENCE DEPARTING SAID LINE, NORTH 00 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 1838.29 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF SOUTH MIDVALE PARK ROAD, ALSO BEING THE POINT OF BEGINNING;

THENCE UPON AND WITH SAID EASTERLY RIGHT OF WAY, CONTINUING NORTH 00 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 216.84 FEET;

THENCE DEPARTING SAID EASTERLY RIGHT OF WAY, NORTH 89 DEGREES 21 MINUTES 53 SECONDS EAST, A DISTANCE OF 181.94 FEET;

THENCE SOUTH 45 DEGREES 35 MINUTES 28 SECONDS EAST, A DISTANCE OF 26.38 FEET;

THENCE NORTH 89 DEGREES 24 MINUTES 32 SECONDS EAST, A DISTANCE OF 52.94 FEET;

THENCE SOUTH 00 DEGREES 35 MINUTES 28 SECONDS EAST, A DISTANCE OF 46.14 FEET;

THENCE NORTH 89 DEGREES 21 MINUTES 53 SECONDS EAST, A DISTANCE OF 178.32 FEET;

THENCE NORTH 00 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 62.40 FEET;

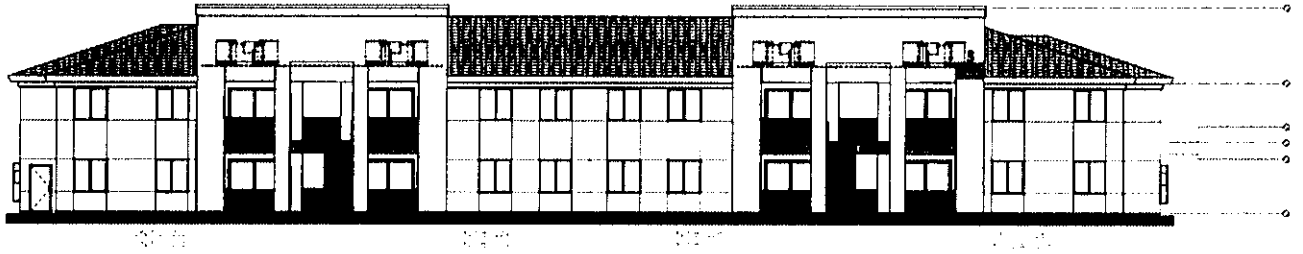
THENCE NORTH 44 DEGREES 21 MINUTES 54 SECONDS EAST, A DISTANCE OF 130.75 FEET TO A POINT ON THE WEST LINE OF THE AFORESAID LAUREL HEIGHTS SUBDIVISION;

THENCE UPON AND WITH SAID WEST LINE, SOUTH 45 DEGREES 38 MINUTES 06 SECONDS EAST, A DISTANCE OF 57.15 FEET;

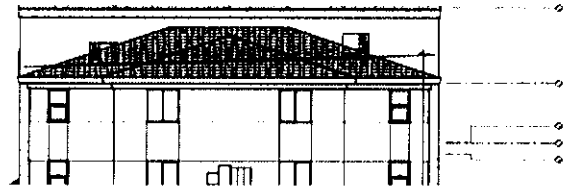
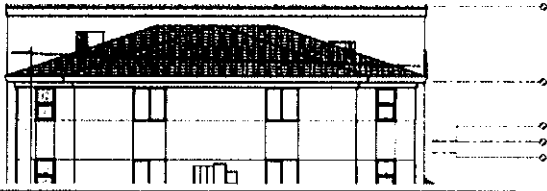
THENCE SOUTH 00 DEGREES 38 MINUTES 06 SECONDS EAST, A DISTANCE OF 266.43 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTH LINE OF SAID SUBDIVISION;

THENCE UPON AND WITH SAID SOUTH LINE, SOUTH 89 DEGREES 21 MINUTES 54 SECONDS WEST, A DISTANCE OF 564.67 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 116,585 SQUARE FEET OR 2.676 ACRES OF LAND, MORE OR LESS.

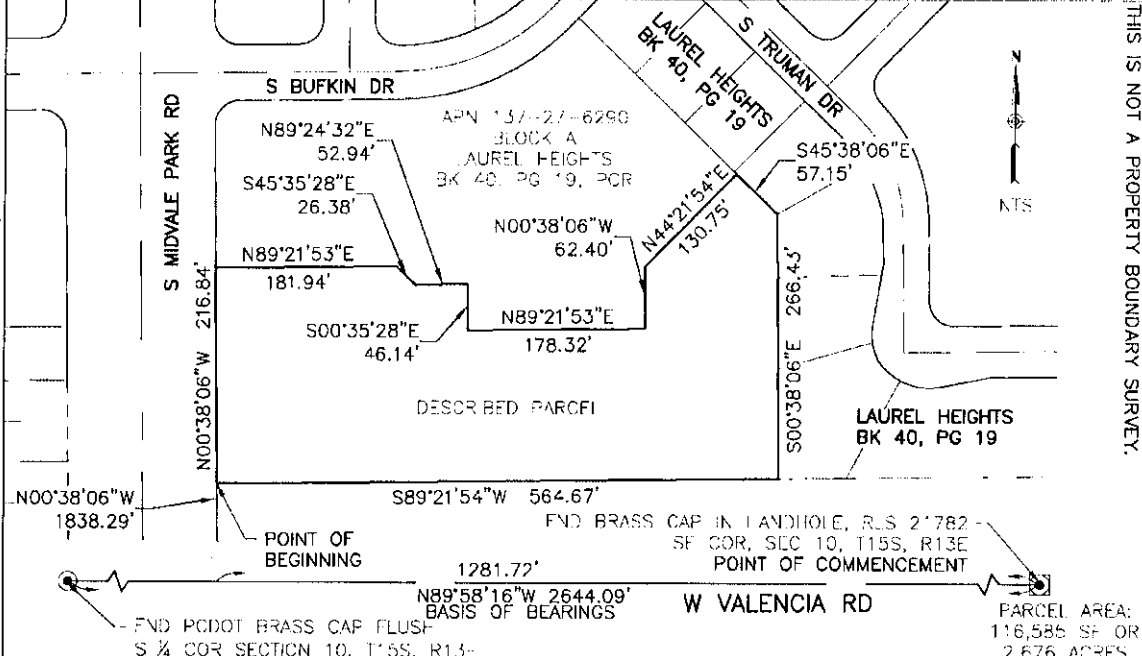
Depiction of Project



③ BUILDING TYPE 2 SOUTH ELEVATION



FILED PROJECT NO. 123122, J:\proj\Draws\Ariz\Draws\001\01\01\123122-01 50'x75' SOUTH/40'x130' EAST, JUN 1, 2024 TIME 02:37 PM



THIS IS NOT A PROPERTY BOUNDARY SURVEY.



DIBBLE



EXHIBIT "A"
PARCEL DESCRIPTION

A PART OF THE SOUTHEAST ¼ OF SECTION 10, T15S, R13E,
GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Dibble Project No
123122

DATE: JUN 2024
DRN: AML CHK: JPG

PAGE 3

PARCEL AREA:
116,585 SF OR
2.676 ACRES

Exhibit C – Form of the County Promissory Note & County Deed of Trust (14 pages)

COUNTY PROMISSORY NOTE

PIMA COUNTY AFFORDABLE HOUSING PROGRAM

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

Date: _____, 2024

Trust Property: _____, Tucson, Arizona 85 _____
Pima County Tax Parcel No. _____

Amount: One Million Dollars (\$1,000,000.00)

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

- Affordability Period** Thirty (30) years from the date the *Certificate of Occupancy* was issued.
- Affordability Covenant** 30-year Affordable Housing Restrictive Covenant for Desert Dove Apartments setting forth the obligations of Desert Dove Apartments, LP, for the utilization of Pima County Affordable Housing Funds.
- Contract** The Affordable Housing Gap Funding Agreement between Desert Dove Apartments, LP, and Pima County setting forth the terms and conditions under which Pima County funds are provided for the construction and/or renovation of the Desert Dove Apartments project (the "Housing Development containing 64 units of affordable rental housing; Pima County Contract No. CT-CR-_____*
- 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 Desert Dove Apartments, LP, as Trustor and Pima County as Trustee to secure performance for the Pima County funds contributed for the Housing Development project.
- Housing Development Name** Desert Dove Apartments
- Note** This Real Estate Non-Recourse Promissory Note
- Maker** Desert Dove Apartments, LP, an Arizona limited partnership, operating in Pima County, Arizona
- Project** Desert Dove Apartments: An Affordable Housing Multi-Family Development project owned by Maker providing sixty-four (64) affordable housing units as follows:
 - 1) A minimum of twenty-two (22) units will be County-Assisted and rented to households with a household income at or below 40% Area Median Income ("AMI") at the time of initial occupancy.

- 2) A minimum of twenty-one (21) units will be County-assisted and rented to households with a household income at or below 50% AMI at the time of initial occupancy.
- 3) A minimum of twenty (20) units will be rented to households with a household income at or below 60% AMI at the time of initial occupancy.

Promise to Pay: For value received, the undersigned Maker promises to pay County pursuant to the terms of this Note the principal sum ONE MILLION DOLLARS (\$1,000,000.00) with interest at two percent (2%) per annum for a total of ONE MILLION SIX HUNDRED THOUSAND DOLLARS (\$1,600,000.00).

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 (30) year Affordability Period will be repaid. The balloon payment will be ONE MILLION SIX HUNDRED THOUSAND DOLLARS (\$1,600,000.00), 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 thirty (30) years from the date of *Certificate of Occupancy (COO)*, as evidenced by the date upon which presiding jurisdiction approved and issued the *COO* 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 defer or waive all or any portion of payment on 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 Affordability Covenant 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 obligations 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 COVENANTS 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.

Right to Cure: Notwithstanding anything to the contrary contained in the loan documents, Maker's limited partners shall have the right, but not the obligation, to cure defaults of Maker under the loan documents, and County agrees to accept cures tendered by Maker's limited partners as follows: (a) with respect to monetary default under the loan documents, County shall notify Maker's limited partners in writing at MHEG Fund 58, L.P. c/o Midwest Housing Equity Group, 515 N 162nd Avenue, Suite 202, Omaha, NE 68118, Attn: President, and Maker's limited partners shall have ten (10) business days after receipt of such notice of such monetary default to cure such monetary default; and (b) with respect to a nonmonetary default under the loan documents, Maker's limited partners shall have thirty (30) business days after the receipt of such notice of such nonmonetary default to cure such default.

General Partner Change: The withdrawal, removal, transfer and/or replacement of the General Partner and/or Class B Limited Partner of Maker pursuant to the terms of the First Amended and Restated Partnership Agreement of Maker ("Maker's Partnership Agreement") shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan; provided that Maker agrees to notify the Lender of any proposed replacement General Partner and/or Class B Limited Partner prior to replacement, and, upon replacement, shall notify the Lender of the name and contact information of the replacement General Partner with reasonable promptness.

Transfer of LP Interest: Nothing in the Loan Documents shall limit or restrict the ability of Maker's Limited Partner, its successors and assigns (the "Limited Partner") to transfer, sell or assign its ownership interest in Maker, from time to time, without consent of Lender, provided that said Limited Partner remains liable for payment of any then unpaid capital contributions to Maker, as and when payable, as set forth in Maker's Partnership Agreement, notwithstanding any such transfer, sale or assignment. In particular, Lender hereby consents to any transfers, sales or assignments of membership interests in Maker to any affiliate of the Limited Partner or any entity in which the Limited Partner, or an affiliate, is the manager or General Partner and agrees that such transfers shall not constitute defaults under the Loan Documents.

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 COVENANTS, or the Contract operates as a waiver of such right or any other right under this Note, the Deed of Trust, the COVENANTS, 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:

Daniel Sullivan, Director
Pima County Department of Community
& Workforce Development
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

MAKER:

Desert Dove Apartments, LP
c/o GHK Desert Dove, LLC
12730 W. Windsor Avenue,
Avondale, AZ 85392

With a copy to:

Pima County Department of Community
& Workforce Development
c/o: Affordable Housing Program
Division Manager
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

With a copy to:

Desert Dove Apartments, LP
c/o WH Desert Dove, LLC
515 N 162nd Avenue, Suite 202
Omaha, Nebraska 68118
Attn: Tom Stratman

With a copy to:

Fennemore Craig, P.C.
2394 E. Camelback Road
Suite 600
Phoenix, AZ 85016
Attention: Brett D. Siglin, Esq.

And a copy to:

MHEG Fund 58, LP
515 N 162nd Avenue, Suite 202
Omaha, Nebraska 68118

And a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Shane R. Deaver

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. Insurance proceeds shall be used pursuant to Section 2 of the Deed of Trust. 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.

SIGNATURES ON FOLLOWING PAGE

FORM OF THE COUNTY DEED OF TRUST

DEED OF TRUST AND ASSIGNMENT OF RENTS

**Desert Dove Apartment, LP – Desert Dove Apartments
Affordable Housing Development Project**

DATE: _____, 2024

TRUSTOR: Desert Dove Apartments, LP, an Arizona limited partnership, with a local Arizona mailing address of:
12730 W. Windsor Avenue, Avondale, AZ 85392

TRUSTEE: Commonwealth National Commercial Services, whose mailing address is:
2390 East Camelback Road, Suite 230, Phoenix, AZ 85016

BENEFICIARY: Pima County, a political subdivision of the State of Arizona, whose mailing address is:

Pima County Department of Community & Workforce Development
Attention: Pima County Affordable Housing Program
2797 E. Ajo Way, 3rd Floor
Tucson, Arizona 85713

THE PROPERTY: Property situated in Pima County, Arizona, described as follows:

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

Street address and identifiable location of this property:

6175 S. Midvale Park Road, Tucson, Arizona 85746.

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 Pima County Affordable Housing Program indebtedness in the principal sum of **One Million**

Dollars (\$1,000,000.00), evidenced by a Promissory Note in favor of Beneficiary of even date herewith (See **Attachment C-2** hereto), 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 Affordable Housing Restrictive Covenant (the "**Affordability Covenant**") made by Trustor and recorded in Sequence _____, Office of the Pima County Recorder.
- E. Performance of the terms of the Pima County Affordable Housing Gap Funding Agreement, Pima County Contract No. PO2400011991 CT2400000062 between Beneficiary and Trustor (the "**County 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 the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any 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. Notwithstanding the foregoing, in the absence of an event of default under the Loan Documents, any proceeds from a casualty or condemnation event shall be released to the Project Owner for the restoration of the Project.
- 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 monies 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 *County Funding Agreement*, (c) the performance of any obligation in the *Affordability Covenant*, or (d) in performance of any agreement hereunder, Beneficiary may, after giving written notice of default to Trustor and upon Trustor'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.
14. That, upon execution, this Deed of Trust shall be recorded in the Office of the Pima County Recorder in Pima County, Arizona. That Trustee accepts this Trust upon execution and recordation. 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.

15. Binding Agreement: This Deed of Trust runs with the land and is binding on all future owners of all or any part of the Property.
16. Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

SIGNATURES ON THE FOLLOWING PAGE

Attachment C-1

Legal Description:

A PART OF A PARCEL DESCRIBED IN THE AMENDED PLAT OF LAUREL HEIGHTS SUBDIVISION, BOOK 40, PAGE 19, RECORDS OF PIMA COUNTY, ARIZONA, SITUATED IN A PART OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 15 SOUTH, RANGE 13 EAST OF THE GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 10, FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION 10, BEARS NORTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, A DISTANCE OF 2644.09 FEET;

THENCE UPON AND WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 10, NORTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, A DISTANCE OF 1281.72 FEET;

THENCE DEPARTING SAID LINE, NORTH 00 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 1838.29 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF SOUTH MIDVALE PARK ROAD, ALSO BEING THE POINT OF BEGINNING;

THENCE UPON AND WITH SAID EASTERLY RIGHT OF WAY, CONTINUING NORTH 00 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 216.84 FEET;

THENCE DEPARTING SAID EASTERLY RIGHT OF WAY, NORTH 89 DEGREES 21 MINUTES 53 SECONDS EAST, A DISTANCE OF 181.94 FEET;

THENCE SOUTH 45 DEGREES 35 MINUTES 28 SECONDS EAST, A DISTANCE OF 26.38 FEET;

THENCE NORTH 89 DEGREES 24 MINUTES 32 SECONDS EAST, A DISTANCE OF 52.94 FEET;

THENCE SOUTH 00 DEGREES 35 MINUTES 28 SECONDS EAST, A DISTANCE OF 46.14 FEET;

THENCE NORTH 89 DEGREES 21 MINUTES 53 SECONDS EAST, A DISTANCE OF 178.32 FEET;

THENCE NORTH 00 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 62.40 FEET;

THENCE NORTH 44 DEGREES 21 MINUTES 54 SECONDS EAST, A DISTANCE OF 130.75 FEET TO A POINT ON THE WEST LINE OF THE AFORESAID LAUREL HEIGHTS SUBDIVISION;

THENCE UPON AND WITH SAID WEST LINE, SOUTH 45 DEGREES 38 MINUTES 06 SECONDS EAST, A DISTANCE OF 57.15 FEET;

THENCE SOUTH 00 DEGREES 38 MINUTES 06 SECONDS EAST, A DISTANCE OF 266.43 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTH LINE OF SAID SUBDIVISION;

THENCE UPON AND WITH SAID SOUTH LINE, SOUTH 89 DEGREES 21 MINUTES 54 SECONDS WEST, A DISTANCE OF 564.67 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 116,585 SQUARE FEET OR 2.676 ACRES OF LAND, MORE OR LESS.

Attachment C-2 – Promissory Note

(Insert a copy of the fully executed Promissory Note here before recording)

Exhibit D – Form of Affordability Restrictive Covenant (9 pages)

When Recorded, Please Return To:

Director, Pima County Community & Workforce Development
2797 E. Ajo Way
Tucson, AZ 85713-6223

AFFORDABLE HOUSING RESTRICTIVE COVENANT

1. Background and Purpose.

- 1.1. Pima County ("County"), and Desert Dove Apartments, LP, an Arizona limited partnership ("Owner"), have entered into an Affordable Housing Gap Funding Agreement ("Agreement"), Pima County Contract No. CT2400000062 PO2400011991. Under that Agreement, County provided \$1,000,000.00 in funding ("Gap Funding") to Owner to complete an affordable-housing project, Desert Dove Apartments ("Project"), subject to, among others, the requirement that the Project remain affordable for a period of 30 years ("County Affordability Period").
- 1.2. The Project consists of 64 rental units, and is located on one parcel of land, legally described in attached **Exhibit D-1** ("Project Property"). Owner owns the Project Property and will operate the Project when completed.
- 1.3. In order to effectuate the County Affordability Restriction, County, and Owner (collectively, "Parties") desire to enter into this Affordable Housing Restrictive Covenant ("Covenant") to be recorded against the Project Property to ensure that any subsequent sale of the Project Property would be subject to the County Affordability Period.

2. Use Restrictions. The Project Property will be subject to the following covenants and restrictions (collectively the "Affordability Restrictions") regulating and restricting the use and transfer of the Project Property, commencing on the date hereof. These restrictions shall be covenants running with the land and will bind Owner and its respective successors and assigns as set forth in this Covenant.

2.1. Residential Use. Owner will cause all occupants to use the Property only for residential purposes and any incidental activities related to residential use that are currently permitted by applicable state and local zoning laws.

3. Term and termination. This Covenant takes effect upon its execution by the last Party to sign it and, unless earlier terminated by written consent of all Parties or through foreclosure, deed in lieu of foreclosure, or exercise of the power of sale under the senior Deed of Trust identified on **Exhibit D-2** (Permitted Encumbrances), terminates 30 years after the effective date.

4. Affordability Restrictions.

- 4.1. All 64 rental units (except the manager unit) comprising the Project must be leased in accordance with applicable LIHTC Income and Rent Limits, which are published annually by the Arizona Department of Housing.
- 4.2. After the LIHTC Affordability Period expires, but before expiration of the County

Affordability Period, all 64 rental units (except the manager unit) comprising the Project must be leased to tenants whose household income does not exceed 80% of the area median income ("AMI") for Pima County, as determined and promulgated by the Department of Housing and Urban Development, as applicable at the time the unit is rented. During this period, the total monthly rent for any one unit may not at any time exceed the allowable rent limit as established by the Arizona Department of Housing as published for the applicable year for 80% tenants ("80% AMI Rent"), which includes the required utilities pursuant to the AMI government program.

4.3. Physical Condition Standards. During the Affordability Period, Owner must maintain the Project suitable for occupancy; and, in decent, safe, and sanitary condition and good repair in accordance with the applicable local, state, and federal health, safety, and building codes and regulations.

5. Eligibility Verification. Owner must ensure that, for the duration of the County Affordability Period, the household income for each household occupying a unit in the Project is verified to be within the applicable limits described in Section 4, based on the tenant's current household income. Eligibility verification requires some form of income documentation (e.g., pay stubs, direct deposit images, third-party government verification of income within applicable limits), which must be retained for the duration of that household's tenancy and for at least one year after termination of that tenancy.

6. Monitoring and Enforcement.

6.1. In order to ensure compliance with and enforce this Covenant, County may:

6.1.1. At any reasonable time and in a reasonable manner enter and inspect the Project Property and to inspect any facility, document, book, and record of Owner relating to the Project.

6.1.2. With at least 30 days' prior written notice, take any reasonable action to cure any violations of the provisions of this Covenant.

6.2. Owner covenants and agrees to inform County by written notice of any breach of the Owner's obligations hereunder within twenty (20) calendar days of first discovering any such breach. Violations must be cured within the deadlines described in paragraph 6.4, below.

6.3. If County believes Owner has violated any provision of this Covenant, County will serve Owner and Owner's Investor Limited Partner (MHEG Fund 58, LP, c/o Midwest Housing Equity Group) with written notice of the alleged default. The notice must specify both the violation alleged and the actions County believes are necessary and feasible to remedy the violation.

6.4. If Owner, or its Investor Limited Partner, fails to cure the violation after more than 30 days after written notice of the violation from County (or for a longer period as may be reasonably required under the circumstances to cure the violation, provided that the Owner, or its Investor Limited Partner, has commenced the cure within the initial 30-day period and is thereafter diligently pursuing the cure to completion), County, at its option (without liability to any party for failure to do so), may, in addition to any other remedies available at law:

6.4.1. Apply to an Arizona court of competent jurisdiction for specific performance of this

Covenant or an injunction to remedy the violation, or for such other relief as may be appropriate.

6.4.2. Seek damages against Owner in an amount that represents that portion of the Gap Funding that is the extent to which the duration of the violation compares to the County Affordability Period and the scope of the violation compares to the overall Project. As an illustration of how this measure of damages should be applied, if the violation lasted for one year after expiration of the cure period and involved 30 of the 64 total units, the damages formula would be $\$1,000,000 * (1/30) * (30/64) = \$15,624.99$.

6.5. In any action brought under this Covenant, the prevailing Party is entitled to recover its reasonable costs and fees incurred in the action, including its reasonable attorney fees.

6.6. Owner and County each acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Covenant are to assure compliance of the Project and the Owner with the program requirements, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING GAP FUNDS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT COUNTY AND THE LOW-INCOME TENANT(S) (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANTS OF THE PROJECT) (OR EITHER OR ALL OF THEM) WILL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS COVENANT IN ANY ARIZONA STATE COURT OF COMPETENT JURISDICTION. Owner hereby further specifically acknowledging that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

7. Representations, Covenants and Warranties of Owner. Owner hereby warrant and covenant that the warranties, covenants, and declaration of obligations and duties set forth herein may be relied upon by County and all persons interested in Project compliance under the Agreement requirements. In performing its duties and obligations hereunder, County may rely upon statements and certificates of the Owner pertaining to occupancy of the Project. The Owner further represents, covenants and warrants to County that:

7.1. The Owner:

7.1.1. has the power and requisite authority to own its properties and assets as owned, where owned, and to carry on its business as now being conducted (and as now contemplated) by this Covenant and the Agreement;

7.1.2. has the full legal right, power, and authority to execute and deliver this Covenant and the Agreement and to perform all undertakings of the Owner hereunder; and

7.2. The execution and performance of this Covenant and the Agreement by the Owner:

7.2.1. will not violate or, if applicable, have not violated any provision of law, rule or regulation, or any order of any court or other governmental agency;

7.2.2. will not violate or, if applicable, have not violated any provision of any indenture, declaration, mortgage, mortgage note or other instrument to which the Owner is a party or by which it or the Project is bound; and

7.2.3. will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

7.3. Except for those items listed on attached **Exhibit D-2**, the Owner will, at the time of execution and delivery of this Covenant, have good and marketable title to the real property and improvements constituting the Project free and clear of any lien or encumbrance.

7.4. There is presently no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting them, or any of their properties or rights, which, if adversely determined, would materially impair the Owner's right to carry on business substantially as now conducted (and as now contemplated) by this Covenant and the Agreement or which would materially, adversely affect its financial condition. Neither the Owner nor Owner's principals, shareholders, managers, members or general partners, as the case may be, have any judgment entered against them which would, when recorded, constitute a lien against or otherwise impair the security of the Project.

7.5. No actions will be taken by the Owner which will in any way adversely affect the use of the Project.

8. Preservation of Records. Owner must maintain records related to compliance with Pima County's affordability restrictions for the duration of each household's tenancy and for at least one year following the termination of any household's tenancy.

9. Recordation of Documents. Owner is authorized to record and file any notices or instruments appropriate to assuring the enforceability of the Affordability Restrictions. Owner will execute any such instruments upon request. The benefits of the Affordability Restrictions may be assignable by County to any successor institution performing substantially similar functions. The Parties intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

10. Nondiscrimination. Owner may not discriminate in the lease, use, or occupancy of any of the rental units on the basis of any of the following: race, color, ethnicity, religion, sex, age, disability, marital or familial status, sexual or gender identity, or lawful source of income.

11. Covenant Runs with the Land. Upon execution Owner will cause this Covenant and all amendments and attachments hereto to be recorded and filed in the official records of the Pima County Recorder's Office in the count in which the Project is located, and pay all fees and charges incurred in conjunction with said recording. The restrictions and other provisions in this Covenant burden and run with the Project Property, bind any of Owner's successors or

assigns, and inure to the benefit of County and any of its assigns.

- 12. Severability.** The provisions of this Covenant are severable. If any provision of this Covenant, or any application of any of its provisions, to the Parties or any person or circumstances, is held invalid, that invalidity will not affect other provisions or applications of this Covenant that can be given effect without regard to the invalidity.
- 13. Restraint on Alienation.** If the Affordability Restrictions are deemed unenforceable by virtue of its scope in terms of purpose or eligibility of tenants, but would be enforceable by reducing or increasing, as applicable, any part or all thereof, the same will be enforced to the fullest extent permissible under the laws and public policies applied in the State of Arizona.
- 14. No Waiver.** No waiver by County of any breach of this Covenant, or any other act or omission by County, may be deemed a waiver of any other or subsequent breach.
- 15. Governing Law.** This Covenant is governed by and must be interpreted in accordance with Arizona law.
- 16. Conflict of Interest.** This Covenant is subject to the provisions of Arizona Revised Statutes § 38-511.
- 17. Entire Agreement; Amendment.** This document constitutes the entire agreement among the Parties pertaining to its subject matter. This Covenant may be modified, amended, altered, or extended only by a written agreement signed by all Parties.

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PIMA COUNTY

Adelita S. Grijalva
Chair, Board of Supervisors

Date

ATTEST

Clerk of the Board

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20__ by _____.

Notary Public

My Commission Expires: _____

Exhibit D-1

Legal Description

A PART OF A PARCEL DESCRIBED IN THE AMENDED PLAT OF LAUREL HEIGHTS SUBDIVISION, BOOK 40, PAGE 19, RECORDS OF PIMA COUNTY, ARIZONA, SITUATED IN A PART OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 15 SOUTH, RANGE 13 EAST OF THE GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 10, FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION 10, BEARS NORTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, A DISTANCE OF 2644.09 FEET;

THENCE UPON AND WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 10, NORTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, A DISTANCE OF 1281.72 FEET;

THENCE DEPARTING SAID LINE, NORTH 00 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 1838.29 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF SOUTH MIDVALE PARK ROAD, ALSO BEING THE POINT OF BEGINNING;

THENCE UPON AND WITH SAID EASTERLY RIGHT OF WAY, CONTINUING NORTH 00 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 216.84 FEET;

THENCE DEPARTING SAID EASTERLY RIGHT OF WAY, NORTH 89 DEGREES 21 MINUTES 53 SECONDS EAST, A DISTANCE OF 181.94 FEET;

THENCE SOUTH 45 DEGREES 35 MINUTES 28 SECONDS EAST, A DISTANCE OF 26.38 FEET;

THENCE NORTH 89 DEGREES 24 MINUTES 32 SECONDS EAST, A DISTANCE OF 52.94 FEET;

THENCE SOUTH 00 DEGREES 35 MINUTES 28 SECONDS EAST, A DISTANCE OF 46.14 FEET;

THENCE NORTH 89 DEGREES 21 MINUTES 53 SECONDS EAST, A DISTANCE OF 178.32 FEET;

THENCE NORTH 00 DEGREES 38 MINUTES 06 SECONDS WEST, A DISTANCE OF 62.40 FEET;

THENCE NORTH 44 DEGREES 21 MINUTES 54 SECONDS EAST, A DISTANCE OF 130.75 FEET TO A POINT ON THE WEST LINE OF THE AFORESAID LAUREL HEIGHTS SUBDIVISION;

THENCE UPON AND WITH SAID WEST LINE, SOUTH 45 DEGREES 38 MINUTES 06 SECONDS EAST, A DISTANCE OF 57.15 FEET;

THENCE SOUTH 00 DEGREES 38 MINUTES 06 SECONDS EAST, A DISTANCE OF 266.43 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTH LINE OF SAID SUBDIVISION;

THENCE UPON AND WITH SAID SOUTH LINE, SOUTH 89 DEGREES 21 MINUTES 54 SECONDS WEST, A DISTANCE OF 564.67 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 116,585 SQUARE FEET OR 2.676 ACRES OF LAND, MORE OR LESS.

Exhibit D-2

Permitted Encumbrances (1 pages)