



## BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: March 4, 2025

\* = Mandatory, information must be provided

or Procurement Director Award: ☐

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

Spire Development, Inc.

**\*Project Title/Description:**

Development and Purchase Agreement

**\*Purpose:**

Pima County ("County") will sell 2.08 acres of vacant land ("Property") to Spire Development, Inc. ("Spire") located at the southeast corner of East Drexel Road and Bonney Avenue. Spire submitted a RFP to the County for the development of the Property and was selected as the winning proposer for the development of an 80-unit, low-income housing tax credit ("LIHTC") project for families to be known as Drexel Commons. The proposed apartment units will be rent and income restricted as required by Arizona Department of Housing for competitive LIHTC projects. These stated commitments to develop an affordable housing project will be memorialized with a 30-year restrictive covenant recorded against the Property. The Property will not be deeded from the County to Spire until the Property is rezoned for the proposed development, all tax credit allocations have been secured, all construction financing is in place, any needed equity financing has been secured, a general contractor has been selected and all necessary building permits have been issued.

**\*Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

**\*Program Goals/Predicted Outcomes:**

The stated program goal as outlined in the Spire RFP is to develop a low income affordable rental housing project in an area with limited supply of affordable housing and high demand. The predicted outcome will be the addition of new affordable rental units to the market area.

**\*Public Benefit:**

The development of the low income affordable rental units will increase the supply of affordable rental units in the market. The increase of affordable rental units will meet the needs of a segment of the population that has been priced out of the housing market by rising rental rates.

**\*Metrics Available to Measure Performance:**

The sale of the subject property at the nominal amount \$200.00 as permitted by ARS 11-251.10 will provide land for the development of a low income affordable rental unit complex. All closing cost will be the responsibility of Spire.

**\*Retroactive:**

No

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To: (OB, 2-26-25(1))  
Vers. 0  
Pgs: 18  
ADDENDUM

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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: RPS

Contract Number (i.e., 15-123): CT2500000009

Commencement Date: 3/4/2025

Termination Date: 2/29/2028

Prior Contract Number (Synergen/CMS): \_\_\_\_\_

☐ Expense Amount \$ \_\_\_\_\_\*

☒ Revenue Amount: \$ 200.00

\*Funding Source(s) required: \_\_\_\_\_

Funding from General Fund? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

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: Jeff Teplitsky

Department: Real Property Services

Telephone: 724-6306

Department Director Signature: \_\_\_\_\_ Date: 2/25/2025

Deputy County Administrator Signature: \_\_\_\_\_ Date: 2/25/2025

County Administrator Signature: \_\_\_\_\_ Date: 2/25/2025

### Development and Purchase Agreement

This Development and Purchase Agreement is consistent with that certain Request for Proposal for Pima County Owned Land for Affordable Housing Development in Various Locations of Tucson, Pima County, Arizona with a release date of August 16, 2024 (the "RFP"); **Spire Development, Inc.** (the "Purchaser" or "Developer"), with an address of 330 W Spring Street, Suite 430, Columbus, Ohio 43215, hereby agrees to purchase from **PIMA COUNTY** (the "Seller" or "County"), with a mailing address of 201 North Stone Avenue, 6<sup>th</sup> Floor, Tucson, AZ 85701 that certain real estate owned by Seller, located at the southeast corner of East Drexel Road and South Bonney Avenue, Tucson, Pima County, Arizona 85706, and identified as Parcel/Tax ID number(s) **140-31-1230; 140-31-1240; 140-31-1250** consisting of **2.08 +/-** acres and generally described and/or depicted on EXHIBIT A attached hereto and incorporated herein, together with all buildings, improvements, and tangible personal property located thereon, all rights, privileges and appurtenances thereto, and Seller's interest in and to any and all leases and rents (collectively referred to as the "Real Estate") subject to and upon the following terms and conditions (the "Agreement" or "Contract"). Seller or County and Purchaser or Developer shall singularly be referred as the "Party" and collectively as the "Parties":

1. Purchase Price. The purchase price (the "Purchase Price") for the Real Estate, subject to all adjustments and credits hereinafter provided, shall be \$200,00. The Purchase Price, less all Earnest Money (as hereinafter defined), shall be paid by wire transfer of readily available funds at Closing. It is in the best interest of Seller to convey the Real Estate for the Purchase Price for the Committed Use, as defined herein, pursuant to A.R.S. § 11-251.10.

2. Earnest Money Deposit. Within 10 business days after date that this Agreement is executed by both Purchaser and Seller (the "Acceptance Date"), Purchaser shall deposit with a Title Company designated by Purchaser (the "Title Company"), \$50,00 as an earnest money deposit (the "Earnest Money"). All Earnest Money shall at all times be applicable to the purchase price for the duration of this Contract. The Earnest Money shall be refundable to the Purchaser throughout the Inspection Period (as defined herein), at any time if Seller breaches or defaults hereunder or as otherwise set forth in this Contract.

3. Closing Date. Subject to all other terms and conditions set forth in this Agreement, the transaction shall schedule to close in collaboration with Pioneer Title Agency or such other place as the Parties may mutually agree upon in writing, on or before the 60th day after the expiration of the Inspection Period. The exact date of closing (the "Closing Date") shall be determined by a written notice from Purchaser to Seller at least 30 days prior to the closing, provided however that the Parties acknowledge that the exact date may be subject to minor adjustment in the days leading up to closing based on lender and equity investor readiness to close.

4. Closing Documents. At Closing, Seller shall deliver: (a) a fully executed Quit Claim Deed (the "Deed") conveying to Purchaser marketable fee simple title to the Real Estate free of any and all liens, encumbrances, easements, restrictions, covenants or other title defects that is prohibitive to the Committed Use (as defined below), except other matters, if any, disclosed in the Title Commitment (as defined herein) and approved by Purchaser as provided in Section 8.2; (b) a Seller's Affidavit in form and substance satisfactory to Purchaser and the Title Company; and (c) all other documents and/or funds, if any, required by Purchaser or Seller.

5. Date of Possession. Possession of the Real Estate shall be delivered to Purchaser on the Closing Date, free and clear of all rights and claims of any other party other than those disclosed in the Title Commitment (as defined herein) to the possession, use or control of the Real Estate.

6. Taxes and Assessment; Closing Costs. Purchaser assumes and agrees to pay all assessments for governmental and private improvements becoming a lien after the Closing Date. Seller shall pay all assessments for governmental and private improvements not assumed by Purchaser and both installments of real estate taxes payable during the prior calendar year which remain unpaid, and its pro rata portion of the real estate taxes assessed for the calendar year in which closing occurs (based upon the number of days in such calendar year prior to and including the Closing Date). The present tax rate and assessed values shall be used for the purposes of the pro-rations under this Section if the applicable tax rate and assessed values have not been set. Purchaser will pay the premium for the Title Policy in the amount of the Purchase Price and any fees in connection with preparation of the sale documents. Seller to pay for the Deed preparation. Purchaser will pay all costs associated with recording the Deed and financing documents (if any). The Earnest Money shall be credited against the Purchase Price at closing. Purchaser and Seller shall each pay their own attorney fees related to the closing of the transaction.

7. Committed Use. Seller's and Purchaser's intended use of the Real Estate shall be multi-family rental housing "developed in a manner that conforms to the HUD definition of Affordable Housing and in accordance with (ARS§ 11.251.01 or ARS§ 11.251.10)" as noted in the RFP, or as otherwise determined by Purchaser and Seller by mutual written agreement (the "Committed Use" or the "Project"). It is anticipated that closing on the Real Estate on the Closing Date shall occur simultaneously with the closing on Project financing described in Section 8.4 below. At such time the County Restrictive Covenant described in Section 22 below shall be executed and recorded and thereby provide assurance to the County of timely completion of the Project.

8. Conditions of Performance. Purchaser's obligations under this Agreement are subject to the timely and complete satisfaction, in the Purchaser's sole discretion, which shall not be unreasonable or in bad faith, of the following conditions, unless waived in writing by Purchaser:

8.1 Survey. Purchaser, at its cost and expense, shall order a current survey of the Real Estate (the "Survey"), by a registered land surveyor designated by Purchaser. Seller shall provide to Purchaser, to the extent that they are in Seller's possession, any surveys and reports on the physical and environmental aspects of the Real Estate. The Survey shall be in form and substance acceptable to Purchaser in its sole discretion.

8.2 Title Insurance. Purchaser, at its cost and expense shall procure (a) a title insurance commitment for the Real Estate issued by the Title Company, in which commitment the Title Company shall agree to (i) insure for the full amount of the appraised value of the Real Estate at the Closing Date marketable fee simple title to the Real Estate in the name of Purchaser, free of all exceptions unless (including, without limitation, the standard exceptions), except such other matters that Purchaser may approve as hereinafter provided, and (ii) issue such endorsements as Purchaser may reasonably request (the "Title Commitment"); and (b) copies of all documents and matters disclosed or referred to in the Title Commitment (the "Title Documents"). If any exception in the Title Commitment is unacceptable to Purchaser, Purchaser shall notify Seller in writing and Seller shall then have 30 days to cure such unacceptable exception. If Seller fails to cure such exception with such 30-day period and provide evidence to Purchaser of such cure, then Purchaser shall have the right but not the obligation to terminate this Agreement by written notice to the Seller and the Earnest Deposits shall be returned to Purchaser. Purchaser, at its cost and expense, shall obtain an owner's policy of title insurance issued by the Title Company, in the full amount of the Purchase Price and in conformity with the marked Title Commitment. Purchaser shall pay the cost of any mortgage title insurance.

8.3 Condition of Real Estate/Inspection Period. Purchaser, at its sole cost and expense shall have an inspection period, which shall commence upon the Acceptance Date of this Agreement. The Inspection Period shall expire on April 30, 2026 (the "Inspection Period"). Purchaser shall have determined, in its sole discretion, during the Inspection Period that: (a) the Real Estate (i) does not contain

any subterranean, karst, or other defects or conditions which impair or adversely affect the Committed Use or development of the Real Estate or require extraordinary or unusually costly development techniques or measures, and (ii) is in all other respects suitable and feasible for and will support and permit the Committed Use and development; (b) the obtaining of all financing, tax credits, subdivision, platting, zoning, variances, vacations, releases, authorizations, engineering approvals, permits and approvals and incentives, public and private, necessary for the Committed Use and development ("Governmental Approvals"), are satisfactory to Purchaser; (c) the Real Estate is free and clear of any and all asbestos, toxic or hazardous material or contaminant and/or the threat of contamination thereby; (d) all utilities necessary or appropriate for the Committed Use and development of the Real Estate are available at the property lines in sufficient quantities, pressures and/or capacities for the Committed Use and development, without hookup, tap in or other charges excepting only charges normally incurred and charged by the applicable public utilities; and (e) it is satisfied in all respects, and in Purchaser's sole discretion, with the Real Estate and the feasibility of its development. In the event Purchaser fails to give Seller written notice of its disapproval of the condition of the Real Estate prior to the expiration of the Inspection Period, Purchaser shall be deemed to have approved the condition of the Real Estate. Seller authorizes Purchaser to file for and obtain such Governmental Approvals and agrees to execute such applications, petitions, easements, covenants, agreements and instruments as in the Purchaser's judgement are necessary or appropriate to file for and obtain such Governmental Approvals, provided however that the Purchaser and Seller shall cooperate and agree upon the necessity and appropriateness of Governmental Approvals that directly pertain to the physical nature of the Real Estate (i.e. subdivision, platting, zoning, variances, vacations, releases, authorizations, and permits). The Parties agree that the closing of the transaction contemplated in this Agreement is expressly contingent upon Purchaser's ability to receive the Governmental Approvals in final non-appealable form.

#### 8.4 Project Timeline and Inspection Period Extensions.

The Parties acknowledge that during the initial Inspection Period, Parties shall in good faith cooperate to pursue rezoning of the site for its Committed Use and that the Purchaser shall also use such Inspection Period to, among other things, seek soft funding for the Project, which may include but shall not be limited to Tucson HOME Consortium Funds and Pima County Gap Funding for Affordable Housing and seek and secure equity and construction financing and provide proof of the same to Seller. The Parties hereby agree that the Purchaser may extend the Inspection Period if the Purchaser meets certain project timeline conditions as follows:

- a. First Inspection Period Extension: Through July 31, 2026. Conditioned upon the submission of an application for Section 42 tax credits from the Arizona Department of Housing during its 2026 LIHTC application round.
- b. Second Inspection Period Extension: Through April 30, 2027. Conditioned upon either (i) reservation award of Section 42 tax credits from the Arizona Department of Housing for its 2026 LIHTC application round or (ii) written notice to Seller indicating that the Purchaser intends to make good faith efforts to enhance its application for Section 42 tax credits in preparation for resubmission of an application for Section 42 tax credits from the Arizona Department of Housing during its 2027 LIHTC application round. The Parties hereby acknowledge that if option (i) above applies, the Purchaser shall in good faith use this Inspection Period to develop design documents, secure entitlements, and begin construction contract negotiations in preparation for the Closing Date which would in such case occur within 60 days of the expiration of the Second Inspection Period Extension unless otherwise agreed to in writing by the Parties.

- c. Third Inspection Period Extension: Through July 31, 2027. Conditioned upon the submission of an application for Section 42 tax credits from the Arizona Department of Housing during its 2027 LIHTC application round.
- d. Fourth Inspection Period Extension: Through December 31, 2027. Conditioned upon receipt of an award of Section 42 tax credits from the Arizona Department of Housing during its 2027 LIHTC application round. The Parties hereby acknowledge that the Purchaser would in good faith use this Inspection Period to develop design documents, secure entitlements, and begin construction contract negotiations in preparation for the Closing Date which would in such case occur within sixty (60) days of the expiration of the Fourth Inspection Period Extension unless otherwise agreed to in writing by the Parties.

To secure any extension beyond the initial Inspection Period, Purchaser shall deposit an additional \$50.00 in earnest money on or before the expiration of the then-current Inspection Period.

8.5 Litigation and Representation. As of the Closing Date, no action or proceeding before a court or other governmental agency or officer shall be pending (and to the best of either Seller's or Purchaser's knowledge, no such action or proceeding shall be threatened) that might impair the value of the Real Estate or prevent Purchaser from undertaking and completing the Committed Use and development of the Real Estate. As of the Closing Date, the representation and warranties set forth in Section 10 shall be true and accurate.

## 9. Nonperformance.

9.1 Seller Nonperformance. In the event that one or more of the conditions set forth in Section 8 are not timely and completely satisfied, Purchaser, at its sole discretion, may grant additional time to Seller to remedy any defect or may cancel this Agreement and all of its obligations hereunder by written notice to Seller, in which event (without limiting Purchaser's other rights or remedies for any breach of this Agreement by Seller) all Earnest Money deposited to date, shall be immediately refunded to Purchaser. If pursuant to any provision of this Agreement the Purchaser elects to grant Seller additional time to remedy a defect or meet a condition of the Contract, all time limits affecting the Purchaser shall be extended by the amount of time given the Seller.

9.2 Purchaser Nonperformance. In the event that the Project does not receive a reservation award of Section 42 tax credits from the Arizona Department of Housing for its 2026 LIHTC application round and does not receive a reservation award of Section 42 tax credits from the Arizona Department of Housing for its 2027 LIHTC application round as contemplated in Section 8.4, Seller, at its sole discretion, may cancel this Agreement and all of its obligations hereunder by written notice to Purchaser, in which event (without limiting Seller's other rights or remedies for any breach of this Agreement by Purchaser) all Earnest Money deposited to date, shall be immediately be given to Seller. Purchaser shall also deliver any surveys, engineering reports and other documents related to the condition of the Real Estate to Seller at no cost.

10. Representations and Warranties. Seller hereby represents and warrants to and covenants and agrees with Purchaser (and shall be deemed to represent and warrant and covenant and agree on the Closing Date) that (a) there is no condemnation or similar proceeding which is pending or threatened against the Real Estate or any part thereof; (b) after the Acceptance Date, Seller will not enter into any lease or other agreement affecting the Real Estate or the possession, use or control thereof or terminate, modify or amend any existing lease or other agreement without first obtaining the Purchaser's written consent; (d) after the Acceptance Date, Seller will not create, permit or suffer any lien or other encumbrance to attach to or affect the Real Estate and improvements thereon, if any, except for the lien of non-delinquent real estate taxes; (e) there are no underground fuel, chemical or other storage tanks or associated equipment

located in the Real Estate, or the Real Estate has not been used for the treatment, storage or disposal of or otherwise contaminated by any hazardous or special wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations); (f) Seller has fee simple, marketable, indefeasible and insurable right and title to the Real Estate; (g) Seller has no knowledge of the existence of karst terrain on the Real Estate; (h) to the best of Seller's knowledge, there has been no release nor is there currently any threatened release of any hazardous, special or other wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations) on the Real Estate; (i) to the extent there are contracts or agreements affecting the Real Estate (including, for example, management or service agreements), Seller will: (i) cancel before closing all such contracts and agreements; (ii) pay all amounts due under, and settle all accounts with respect to, any such contracts and agreements; and (iii) deliver to Purchaser at closing evidence that any such contracts and agreements have been canceled and all such amounts and accounts have been paid and settled; (i) to the extent Seller is an entity, it is duly organized, validly existing and in good standing in its jurisdiction or organization; and (j) that this Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms.

11. Damage and Condemnation. If at any time after the Acceptance Date (a) the Real Estate shall be condemned, damaged or destroyed, in whole or in part; or (b) any notice of condemnation shall be given, then Purchaser, at its sole option, may cancel this Agreement or proceed with closing. If Purchaser elects to proceed with closing, then Purchaser may accept an assignment of such proceeds resulting from condemnation by a governmental authority other than Seller or by a utility other than Seller. If Purchaser elects to cancel this Agreement, as provided in this paragraph, all Earnest Money deposited shall be immediately refunded to Purchaser. Seller shall bear all risk of loss of any nature whatsoever to the Real Estate until closing.

12. Inspection. Purchaser, its employees, agents and independent contractors shall have the right to enter upon the Real Estate and conduct all tests and examinations which Purchaser deems necessary at its sole cost and expense upon 5 business days written notice to Seller. Purchaser indemnifies Seller from any damages occasioned thereby. Purchaser shall restore Real Estate to the existing condition before said tests or examinations were conducted.

13. Notices. All notices, demands, instructions or requests to be given to either party hereunder shall be in writing and sent by: (a) electronic mail; (b) overnight delivery service; (c) personal delivery; or (c) registered or certified U.S. Mail, return receipt requested; and addressed to the addresses noted below. Any notice that is actually received shall be effective regardless of the manner in which it was sent or delivered. The Parties will notify the other within 10 business days of any change of addresses for purposes of this section.

If to Seller: c/o Director, Pima County Real Property Services,  
201 N Stone Ave, 6th Flr, Tucson, AZ 85701-1207  
E-mail: [Jeffrey.Teplitsky@pima.gov](mailto:Jeffrey.Teplitsky@pima.gov)

If to Purchaser: c/o Scott Harrold, Principal, Spire Development, Inc.  
330 W Spring Street, Suite 430, Columbus, Ohio 43215  
E-mail: [Scott@livespire.com](mailto:Scott@livespire.com)

14.1 Default by Seller. In the event of a breach by Seller, Purchaser shall be entitled to: (a) the remedy of specific performance to enforce the terms hereof; and/or (b) cancel this Contract and all of its obligations hereunder by written notice to Seller, in either of which events the Earnest Money shall be

refunded immediately to Purchaser. In the event of any such breach, Purchaser shall be entitled to recover, in addition to all other remedies, reasonable attorneys' fees and court costs incurred.

14.2 Default by Purchaser. In the event of a breach of this Agreement by Purchaser, Seller may, as its sole remedy hereunder, rescind this Agreement and retain the Earnest Money as liquidated damages and deliver all surveys, plans, engineering reports and other documents related to the Real Estate.

15. Assignment/ Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the Parties. This Agreement may not be assigned by Seller. Purchaser may assign this Agreement to an affiliated entity upon Seller's written consent which shall not be unreasonably withheld. An "affiliated entity" is an entity that Seller directly controls or is under common control with Seller.

16. Survival and Indemnity. All representations and warranties set forth in this Agreement, shall survive the closing, and for a period of 1 year after the Closing Date, Purchaser shall indemnify and hold Seller harmless from and against all costs and damages (including attorneys' fees and court costs) incurred as a result of any breach of any representation or warranty by Seller.

17. General. The terms and provisions of this Agreement shall be governed and construed in accordance with the laws of the State of Arizona. The captions and section numbers shall not be considered in any way to affect the interpretation of this Contract. This Agreement is the final expression of the complete and exclusive agreement between the Parties and supersedes all prior offers, negotiations and discussions. This Agreement may be executed in 2 or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

18. Authority. Except as expressly provided otherwise herein, each undersigned person signing on behalf of any party that is a corporation, partnership or other entity certifies that (a) they are fully empowered and duly authorized by any and all necessary action or consent required under any applicable articles of incorporation, by-laws, partnership agreement or other agreement to execute and deliver this Agreement for and on behalf of said party; (b) that said party has full capacity, power and authority to enter into and carry out its obligations under this Contract; and (c) that this Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

19. Attorneys' Fees. Either party to this Agreement who is the prevailing party in any legal or equitable proceeding against any other party to this Agreement brought under or with relation to the Agreement or the transaction contemplated hereby shall, in addition to any other remedy at law or provided for herein, be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

20. RESERVED.

21. Real Estate Brokerage Representation. The Parties represent and warrant to one another that no real estate brokers or agents have been used or consulted in connection with the purchase and sale of the Real Estate. Any fees, real estate commissions, costs and/or expenses due to Seller's real estate brokers or agents will be paid exclusively by Seller. Each party covenants and agrees to defend, indemnify and save the other harmless from any actions, damages, fees, real estate commissions, costs and/or expenses (including reasonable attorneys' fees) relating to a breach or alleged breach of the foregoing representation and warranty.

22. Affordable Housing Restrictive Covenants. Consistent with the RFP, the Parties hereto acknowledge that in order to provide assurance that the Real Estate shall remain as its Committed Use after



completion of the Project, the Real Estate “may be restricted by a regulatory agreement to remain continually for use as affordable housing to low-income persons for a period of not less than 30 years” (the “County Restrictive Covenant”). The Purchaser agrees to cooperate in good faith to execute and record such County Restrictive Agreement in a form similar to that of the attached Exhibit B, consistent with the RFP if required by the County on the Closing Date. Additionally, the Parties hereto acknowledge that as a part of such closing, the Purchaser intends to execute and record the Declaration of Affirmative Land Use and Restrictive Covenants Agreement (“LURA”) required by the Arizona Department of Housing to ensure that projects financed with the Internal Revenue Code § 42 tax credits (“LIHTC Affordability Period”) will remain affordable housing long-term.

23. Americans with Disabilities Act. Developer will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

24. Non-Discrimination. Developer 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 Contract, Developer will not discriminate against any employee, renters, buyers, or any other individual in any way because of that person’s age, race, creed, color, religion, sex, disability or national origin in alignment with the Fair Housing Act and other federal laws.

25. 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.

26. Ethics. During the term of this Agreement, Developer will maintain business ethics standards aimed at avoiding any impropriety or conflict of interest that could be construed to have an adverse impact on the County’s best interests.

26.1 Developer will take reasonable steps to prevent any actions or conditions that could result in a conflict with County’s best interests. These obligations apply to the activities of Developer employees, agents, consultants, subcontractors, and subcontractor employees and consultants.

26.2 Developer employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to County’s representatives, employees or their relatives.

26.3 Developer employees, agents or subcontractors (or their relatives) should not receive any payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.

26.4 Developer will notify a designated County representative within 48 hours of any instance where the Developer becomes aware of a failure to comply or possible failure to comply with the provisions of this Section.

26.5 Upon request by County, Developer agrees to provide a certified Management Representation Letter executed by selected Developer representatives in a form agreeable to County stating that they are not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.

26.6 Developer will include this clause in all contracts with subcontractors and material suppliers receiving more than \$25,000.00 in funds in connection with the Project.

26.7 Developer will permit interviews of employees, reviews and audits of accounting or other records by County representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Developer's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Developer in their relations with County's current or former employees or employee relatives.

26.8 Developer will implement a program requiring its employees to sign acknowledgements that they have read and understand County's Business Ethics Expectations as outlined in this Agreement.

27. Non-Appropriation. Notwithstanding any other provision in this Agreement, County may terminate this Agreement if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Agreement. In the event of such termination, County will have no further obligation to Developer, other than to pay for services rendered prior to termination.

28. Books and Records. Developer 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, Developer 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.

29. Public Records.

29.1 Disclosure. 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.

29.2 Records Marked Confidential; Notice and Protective Order. If Developer reasonably believes that some of those records contain proprietary, financial, trade-secret or otherwise-confidential information, Developer must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Developer of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Developer 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.

30. Legal Arizona Workers Act Compliance. Developer hereby warrants that it 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"). Developer will further ensure that each subcontractor who performs any work for Developer under this Agreement likewise complies with the State and Federal Immigration Laws. County has the right at any time to inspect the books and records of Developer and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

31. Israel Boycott Certification. Pursuant to A.R.S. § 35-393.01, if Developer engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000.00 or more, Developer certifies 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.

32. Forced Labor of Ethnic Uyghurs. Pursuant to A.R.S. § 35-394, if Contractor engages in for profit activity and has 10 or more employees, Contractor certifies 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) and 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 Contractor becomes aware during the term of the Agreement that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within 180 days.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

This Offer to Purchase Real Estate is hereby executed this 25 day of Feb 2025 as to Purchaser.

**PURCHASER:**

Spire Development, Inc.

By: 

Printed Name: Scott Harrold

Title: Executive Vice President and COO

**SELLER:**

PIMA COUNTY, a political subdivision of the State of Arizona:

\_\_\_\_\_  
Rex Scott, Chair, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Melissa Manriquez, Clerk of Board

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT:

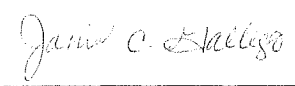
  
\_\_\_\_\_  
Jeff Teplitsky, Director, Real Property Services

2/25/2025

  
\_\_\_\_\_  
Carmine DeBonis, Jr., Deputy County Administrator, Public Works

2/25/2025

APPROVED AS TO FORM:

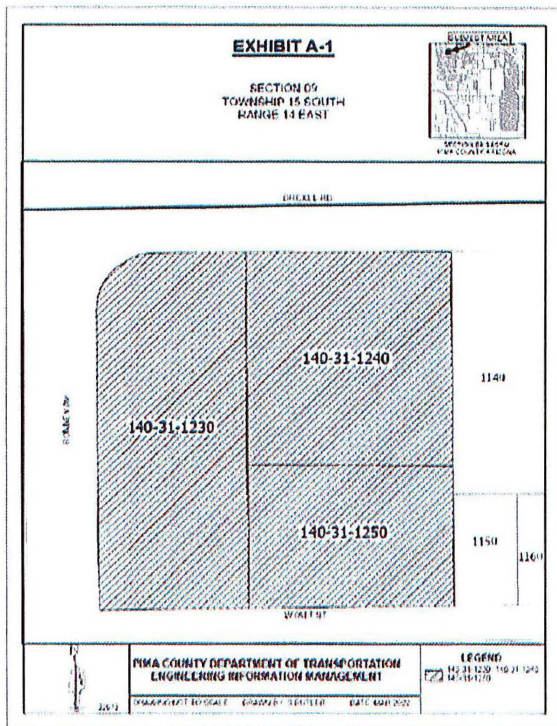
  
\_\_\_\_\_  
Janis Gallego, Deputy County Attorney

## EXHIBIT A

Parcel/Tax ID number(s):

140-31-1230; 140-31-1240; 140-31-1250

+/- 2.08 acres



**Exhibit B – Form of Affordability Restrictive Covenant (9 pages)**

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When Recorded, Please Return To:

Director, Pima County Community & Workforce Development  
2797 E. Ajo Way, 3<sup>rd</sup> Floor  
Tucson, AZ 85713-6223

**AFFORDABLE HOUSING RESTRICTIVE COVENANT**

**1. Background and Purpose.**

1.1. Pima County ("County"), \_ [TO BE FORMED SPIRE ENTITY] ("Owner") Spire Development, Inc. ("Developer") have entered into a Development and Purchase Agreement ("Agreement"), Pima County Contract No. CT-CR-xx-xxx. Under that Agreement, County provided to Developer the real property defined herein as the "Project Property" at a nominal fee to complete an affordable-housing project, \_\_\_\_\_ ("Project"), subject to, among others, the requirement that the Project remain affordable for a period of 30 years ("County Affordability Period"). The Project is also subject to affordability restrictions tied to other funding sources, including a Low-Income Housing Tax Credit ("LIHTC") extended use period, which is in effect through \_\_\_\_\_, unless earlier terminated in accordance with the LIHTC "qualified contract" process described in Internal Revenue Code § 42(h)(f)(6) ("LIHTC Affordability Period").

1.2. The Project consists of \_\_\_\_\_ two bedroom units, \_\_\_\_\_ three bedroom units, and \_\_\_\_\_ four bedroom units for a total of \_\_\_\_\_ rental units, and is located on a parcel of land, legally described in attached **Exhibit D-1** and further identified by Pima County Assessor Tax Parcel Number \_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ ("Project Property"). Owner owns the Project Property.

1.3. In order to effectuate the County Affordability Restriction, County, Owner and Developer (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 Developer, Owner and their 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** and terminates 30 years after the effective date.

**4. Affordability Restrictions.**

4.1. Pursuant to the terms of that certain Declaration of Affirmative Land Use and Restrictive Covenants Agreement by and between Owner and the State of Arizona and Arizona Department of Housing, recorded and effective as of \_\_\_\_\_, while the LIHTC Affordability Period is in effect, all \_\_\_\_\_ rental units comprising the Project are to be leased in accordance with applicable LIHTC Income and Rent Limits, which are published annually by the Arizona Department of Housing (for demonstrative purposes, a copy of the LIHTC Income and Rent Limits applicable at the time of the execution of this Covenant is attached as **Exhibit D-3**). Such LIHTC Income and Rent Limits are subject to change, and nothing herein shall bind Owner or Developer to continue complying with such LIHTC Income and Rent Limits to the extent that the same are revised from time to time, and further the County shall have no right to enforce such LIHTC Income and Rent Limits.

4.2. After the LIHTC Affordability Period expires, but before expiration of the County Affordability Period, all \_\_\_\_\_ rental units comprising the Project (collectively, the "County Affordable Units") 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 (HUD), as applicable at the time the unit is rented. During this period, the total monthly rent for any one of the County Affordable Units 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% AMI tenants ("80% AMI Rent"), which includes the required utilities pursuant to the government program (for demonstrative purposes, a copy of the 80% AMI Rent applicable at the time of the execution of this Covenant is attached as **Exhibit D-4**).

4.3. **Physical Condition Standards.** During the Affordability Period, the 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.

4.4. **Project Completion.** The Owner shall adhere to all applicable placed in-service deadlines under IRC § 42(h)(1) which ensure timely Project completion for affordable housing projects financed by the low-income housing tax credit.

**5. Eligibility Verification.** Owner must ensure that, for the duration of the County Affordability Period, the household income for each household occupying a County Affordable 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 1 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 and upon reasonable notice enter and inspect the Project Property to inspect any facility, document book, and record of the 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 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 or Developer 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 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 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.
- 6.5. 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. The Parties 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 THE PROJECT PROPERTY 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 warrants and covenants 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. is not in default under 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 C-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 it, or any of its 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, its 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 materially adversely affect the use of the Project.

8. **Preservation of Records.** Owner or Developer must maintain records related to compliance with Pima County's affordability restrictions for the duration of each household's tenancy and for at least 1 year following the termination of any household's tenancy.

9. **Recordation of Documents.** Owner and Developer are authorized to record and file any notices or instruments appropriate to assure the enforceability of the Affordability Restrictions.

Owner and Developer 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 and Developer 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.

*The remainder of the page is intentionally left blank.*

**Signatures are on following pages**

**PIMA COUNTY**

\_\_\_\_\_  
Rex Scott  
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:  
\_\_\_\_\_

**OWNER:**

**[TO BE FORMED SPIRE ENTITY SIGNATURE BLOCK]**

\_\_\_\_\_

\_\_\_\_\_  
Date

COUNTY OF PIMA            )

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_