



Contract Number: CT-PW-14000000000 00000540
Effective Date: 7-1-14
Term Date: 6-30-19
Cost: \$10,130,874.00
Revenue: _____
Total: _____ NTE: _____
Action: _____
Renewal By: _____
Term: 4-1-19
Reviewed by: [Signature]

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: July 1, 2014 - Addendum

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Purchase of property from **Landmark Title Assurance Agency of Arizona, LLC**, an **Arizona limited liability company** under Trust 18344-T, to be added to the Kino Sports Complex and developed into a regional soccer and field sports facility.

Address or General Location: I-10 and Kino Parkway
Tax Parcel Number: 132-28-0010 thru 7630 and 132-19-148A
Purchase Price: \$ 8,750,000.00 principal
\$ 1,308,874.00 interest
\$10,058,874.00 total

Terms: \$1,750,000.00 down payment at close of escrow
\$7,000,000.00 @ 6.0% interest (on the unpaid balance) paid in 5 annual payments of \$1,661,774.80 with no penalty for early pay off.

County's Appraised Value: \$8,380,000.00

Estimated Closing Costs: \$ 72,000.00

Size and Type of Property to be Acquired: 166.6± Acres

Size of Seller's Entire Parcel Before Acquisition: 166.6± Acres

Zoning: R-1, R-2, C-1, C-2, and OCR-1

[Signature]

STAFF RECOMMENDATION(S):

The Purchase Price will be reduced to \$8,662,500.00 (a reduction of 1%, or \$87,500.00) if the County pays the full Purchase Price at Closing.

The Closing is subject certain contingencies, including a substitute Assurance Agreement, a PDR extension, release of the property from a School Fee Agreement, the Title Company being prepared to issue Owner's and Lender's Title Policies subject only to the agreed upon exceptions, and a clean updated Phase One.

It is recommended that the Pima County Board of Supervisors approve and authorize the Chair to execute the acquisition agreement (3), Promissory Note, and Deed of Trust to purchase the above-referenced property from Landmark Title Assurance Agency of Arizona, LLC, an Arizona limited liability company under Trust 18344-T.

PIMA COUNTY COST: \$10,130,874.00

FUNDING SOURCE(S): General Fund
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

YES NO

Board of Supervisors District:

1 2 3 4 5 All

IMPACT:

IF APPROVED:

Pima County will acquire 166± acres of property suitable for the future Kino Memorial Soccer Complex.

IF DENIED:

Pima County will not acquire 166± acres of property suitable for the future Kino Memorial Soccer Complex.

DEPARTMENT NAME: Public Works Real Property

CONTACT PERSON: Greg Foster Telephone No.: 724-6681



MEMORANDUM

PUBLIC WORKS ADMINISTRATION

June 24, 2014

TO: C. H. Huckelberry
County Administrator

FROM: Neil Konigsberg, Manager
Real Property Services

A handwritten signature in black ink, appearing to read "Neil Konigsberg", is written over the printed name.

SUBJECT: Purchase Agreement, Promissory Note, and Deed of Trust

We request your approval to place the Purchase Agreement, Promissory Note, and Deed of Trust for the purchase of the property located at I-10 and Kino Parkway consisting of approximately 167± acres from Landmark Title Assurance Agency of Arizona, LLC (Stardust-Reif No. 3 LLC beneficiary) on the July 1, 2014 BOS Agenda Addendum. This property to be added to the Kino Sports Complex and developed into a regional soccer and field sports facility.

Tax Parcel Numbers Parcels #132-28-0010 thru 7630 and 132-19-148A

C: John M. Bernal, Deputy County Administrator – Public Works

APPROVED:

A handwritten signature in black ink, appearing to read "C. Huckelberry", is written over the printed name. To the right of the signature, the date "6/24/14" is handwritten.

C. H. Huckelberry, County Administrator

Pima County Real Property Services	
PROJECT: Irvington Place	
SELLER: Landmark Title Assurance Agency of Arizona, LLC as Trustee under Trust 18344-T	CONTRACT
AMOUNT: \$10,058,874.00 P & I \$ <u>72,000.00</u> Maximum	NO. <u>CT-PW-14(0000)0002000000540</u>
Costs	AMENDMENT NO. _____
\$10,130,874.00 Total	This number must appear on all invoices, correspondence and documents pertaining to this contract.

ACQUISITION AGREEMENT

1. **Defined Terms.** The following terms will be used as defined terms in this Acquisition Agreement ("**Agreement**"): .

1.1 **Seller:** Landmark Title Assurance Agency of Arizona, LLC, an Arizona limited liability company as Trustee under Trust 18344-T.

1.2 **Stardust:** Stardust-REIF No.3, L.L.C., an Arizona limited liability company, the beneficiary of Landmark Title Assurance Agency of Arizona Trust 18344-T.

1.3 **Buyer:** Pima County, a political subdivision of the State of Arizona

1.4 **Purchase Price:** the sum of Eight Million Seven Hundred Fifty Thousand Dollars (\$8,750,000.00).

1.5 **Buyer's Maximum Costs:** the sum of (i) Buyer's share of Closing Costs, and (ii) Buyer's share of Prorations, shall not exceed Seventy-Two Thousand Dollars (\$72,000.00).

1.6 **Title Company:** Title Security Agency, LLC, Authorized Representative for First American Title Insurance Company

1.7 **Closing Date:** the actual day of Closing, which shall be the 4th day of August, 2014, or as otherwise agreed to by the Parties pursuant to the terms of this Agreement.

1.8 **Effective Date:** the date Seller and Buyer have approved and accepted this Agreement by affixing their signatures. The date Buyer executes this Agreement is the date this Agreement is signed by the Chair of the Pima County Board of Supervisors.

1.9 **Property:** the real property described in Exhibit A, and depicted in Exhibit A-1, together with all improvements thereon and all water rights associated with the Property, if any.

1.10 Removed Exceptions for the Property: Not Applicable.

1.11 Seller's Address: Stardust-REIF No. 3, L.L.C., 6730 North Scottsdale Road, Suite 230, Scottsdale, AZ 85253, Attention: Chris B. Heeter; E-mail cheeter@stardustco.com, and Landmark Title Assurance Agency of Arizona, LLC, as Trustee under Trust 18344-T, 2730 East Broadway Boulevard, Suite 100, Tucson, AZ 85716, Attention: Joyce M. Rodda, Trust Department/Trustee Sale Department; E-mail joyce.rodde@ltaz.com

1.12 Buyer's Address: Manager, Pima County Real Property Services, 201 N Stone Ave, 6th Flr, Tucson, AZ 85701-1207; E-mail: neil.konigsberg@pima.gov

2. **Parties; Effective Date.** This Agreement is entered into between Seller and Buyer, and shall be effective on the Effective Date. Seller and Buyer are collectively referred to herein as the "**Parties**," and individually as a "**Party**."

3. **Purchase of Property.** Buyer agrees to acquire from Seller, and Seller agrees to convey to Buyer, in consideration of the Purchase Price, the following real property interests:

3.1 Seller's fee interest in the Property; and

3.2 The right for Buyer, its agents and contractors, to enter upon the Property (the "**ROE**") prior to closing to inspect the Property and to conduct other non-ground-disturbing activities, provided that such activities do not unduly disturb Seller's use of the Property.

4. **Payment of Purchase Price.** The Purchase Price shall be paid as follows:

4.1 Installment Sale. County will pay a down payment in the amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) at Close of Escrow (the "Down Payment"). At Closing, County shall execute a non-recourse promissory note in the Form of **Exhibit F** (the "Note") payable to Stardust. The Note will be secured by a non-recourse Deed of Trust (the "Deed of Trust") in the form of **Exhibit G**, naming Stardust as the beneficiary and First American Title Insurance Company as Trustee. The Note shall bear interest at the rate of Six Percent (6.0%) per annum, beginning at the Close of Escrow. The Note shall have five (5) equal annual payments of principal and interest in the amount of One Million Six Hundred Sixty-One Thousand Seven Hundred Seventy-Four Dollars and Eighty Cents (\$1,661,774.80), as set forth in the amortization schedule attached as **Exhibit H**. The first payment shall be due one year after the Closing Date, and the four subsequent payments shall be due annually on the same day of the year. The County may prepay the remaining principal and accrued interest at any time without prepayment premium or penalty.

4.2 Tax-Exempt Interest. Buyer agrees to file with the Internal Revenue Service, promptly after the Closing, a Form 8038-G, Information Return for Tax-Exempt Governmental Obligation, completed as set forth on **Exhibit I**. Buyer represents that the Note is not an obligation of a type offered by Buyer to the public. Buyer will nevertheless maintain a register in the form attached as **Exhibit J**, without representation or warranty that the register meets the requirements of Section 149 of the Internal Revenue Code of 1986, as amended (the "Code"), or that Section 149 of the Code is or is not applicable to the Note. The Note may be assigned or transferred by Seller only

by surrender of the Note and either the reissuance by Buyer of the Note to the new holder or the issuance by Buyer of a new promissory note (payable on the same terms and conditions as the surrendered Note to the new holder). The Note can be transferred or assigned only as a whole. Notwithstanding Buyer's compliance with its agreements contained in this Section 4.2, Buyer makes no representations or warranties to Seller that interest on the Note will be exempt from federal and state income taxes.

4.3 Full Payment at Closing. Notwithstanding anything in this Agreement to the contrary, County may elect to pay the entire Purchase Price at Closing. In the event County pays the entire Purchase Price at Closing, the Purchase Price shall be reduced by Eighty Seven Thousand Five Hundred Dollars (\$87,500.00) or One Percent (1%) of the Purchase Price, and the Purchase Price in such event shall be in the total amount of Eight Million Six Hundred Sixty-Two Thousand Five Hundred Dollars (\$8,662,500.00).

5. Seller's Warranties

5.1 Leases. Seller warrants that there are no oral or written leases on all or any portion of the Property.

5.2 Wells and Water Rights. Seller warrants the following to Seller's knowledge concerning wells and/or water rights associated with the Property:

NO, there are no wells on or water rights associated with the Property

YES, there is a well on the Property or there are water rights associated with the Property, and they are specifically identified on Exhibit C attached. (Attach "Seller Questionnaire Re Wells and Water Rights" form. Seller agrees to assign and transfer to Buyer effective upon Closing, any and all wells or water rights certificated or claimed appurtenant to the Property. Seller shall execute all documents reasonably necessary to effect such transfer.

5.3 Underground Improvements. Seller warrants the following to Seller's knowledge concerning the location of septic tanks, septic or leach fields, alternative waste disposal systems, private irrigation lines, or other underground improvements on the Property:

NO, there are no septic tanks, septic or leach fields, alternative waste disposal systems, private irrigation lines, and/or other underground improvements on the Property.

YES, there are underground improvements located on the Property as referenced in the title exception documents listed on Exhibit B attached hereto.

For purposes of this Agreement, including, without limitation, Section 13.1 below, the terms "to Seller's knowledge" or words of similar import shall mean the current actual, conscious knowledge of Chris B. Heeter as of the date of this Agreement, without any duty of investigation or inquiry by him whatsoever, and Buyer is not relying on him to have made any investigation or inquiry. Buyer acknowledges that Chris B. Heeter is named solely for the purpose of defining and narrowing the

scope of Seller's knowledge and not for the purpose of imposing any additional liability on or creating any additional duties running from Chris B. Heeter, individually, to Buyer. Buyer covenants that it will bring no action of any kind against Chris B. Heeter individually.

Buyer acknowledges and agrees that upon Close of Escrow, Seller shall sell and convey to Buyer and Buyer shall accept the Property "AS-IS, WHERE-IS" and "WITH ALL FAULTS". Without limiting the generality of the foregoing, Buyer hereby expressly waives and relinquishes any and all rights and remedies Buyer may now or hereafter have against Seller, whether known or unknown, with respect to (i) the nature or condition of the Property (including, without limitation, any design or natural defect of any kind or nature whatsoever), (ii) the fitness of the Property for Buyer's intended use, and (iii) any past, present or future presence or existence of no pollutants, contaminants, toxic or hazardous substances, wastes or materials, except as provided in Section 13.1 below. The waivers and releases by Buyer herein contained shall survive the Close of Escrow and the recordation of the Deed and shall not be deemed merged into the Deed upon recordation. Seller's representations and warranties will survive Closing for a period of one (1) year.

6. Closing Costs and Prorations.

6.1 Closing Costs. The following closing costs ("*Closing Costs*") will be paid as follows:

6.1.1 All escrow fees shall be equally divided between Seller and Buyer. Recording fees, if any, shall be paid by Buyer.

6.1.2 Seller will pay for a Standard Owner's Title Insurance Policy for the Property, in the amount of the Purchase Price. In the event Buyer desires an Extended Owners Title Policy, or any specific endorsements to the Standard Owner's Title Insurance Policy, Seller will pay that portion of the premium allocable to a Standard Owner's Title Insurance Policy, and Buyer will pay that portion of the premium allocable to the additional coverage and comply with any title requirements for the issuance of such extended coverage or title endorsement. Buyer will pay the concurrent issuance costs for the Lender's Title Insurance Policy issued to Stardust, if applicable.

6.1.3 Seller will pay for any necessary Releases.

6.1.4 Buyer will pay other Closing Costs related to the Closing.

6.2 Prorations. Property taxes, rents, and annual payment of assessments with interest, if any (collectively "*Prorations*") will be prorated as of January 1, 2014. If Seller's entire owned parcel is larger than the Property, then the proration of taxes will be for the portion of taxes assessed against Seller's entire parcel which is attributable to the Property. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, if the Closing is delayed beyond August 15, 2014 due to any action on the part of Seller, the 2014 property taxes due and owing on the Property shall be prorated and Seller shall pay the 2014 property taxes from January 1, 2014 through the delayed Closing Date, subject to Section 10.1.

6.3 Buyer's Total Costs. Buyer's total costs at Closing shall not exceed Buyer's Maximum Cost, provided, however, that Buyer may unilaterally increase Buyer's Maximum Cost by written notice from Buyer to Seller prior to Closing. If Buyer's total costs at Closing exceed Buyer's

Maximum Costs, and if Buyer does not unilaterally increase Buyer's Maximum Cost, this Agreement will terminate unless Seller, in its sole and absolute discretion, elects by written notice from Seller to Buyer given within five (5) business days after the scheduled Closing Date to reduce Buyer's total costs at Closing to an amount equal to Buyer's Maximum Cost by reducing the Down Payment, the principal amount of the Note or the interest rate on the Note, or a combination of any of the foregoing.

7. Escrow and Title.

7.1 Escrow. Title Company will act as escrow agent. This Agreement will constitute escrow instructions in connection with the escrow established with Title Company under this Agreement (the "*Escrow*"). Title Company will make reasonably suitable arrangements with either Party, upon that Party's request, to have the Party execute any of the documents to be executed by that Party as provided in this Agreement at the office of Title Company that is most convenient for Buyer.

7.2 Title Commitment. Escrow Agent will distribute to the Parties a Commitment for Standard Owner's Title Insurance (the "*Commitment*") together with complete and legible copies of all documents which will remain as exceptions to Buyer's policy of title insurance.

7.3 Amended Commitment. In the event Title Company should issue an Amended Commitment for Title Insurance which discloses an exception(s) not previously disclosed, Buyer shall have three (3) business days after the receipt of the Amended Commitment and the new Exceptions (the "*Disapproval Period*") within which to notify Seller and the Escrow Agent in writing of Buyer's disapproval of any new exceptions shown thereon (the "*Disapproval Notice*"). In the event of such disapproval, Seller shall have three (3) business days from receipt of the Disapproval Notice in which to notify Buyer in writing whether Seller intends to eliminate each of the disapproved Exceptions prior to the Closing (the "*Notice Period*"). If Seller fails to notify Buyer of its intent with respect to the disapproved items within that time or if Seller elects not to cure all disapproved items, Buyer may terminate this Agreement and the Escrow will be canceled. If the Amended Commitment is issued less than three (3) business days prior to the date of the Closing, then the date of the Closing is extended until the end of the Disapproval Period and the Notice Period, if applicable.

8. Contingency for Tentative Plat Extension.

8.1 PDR Contingency. Seller's obligation to Close is contingent upon the Tucson City Council ("Council") approval of a Protected Development Right (the "*PDR*") for the *Tentative Plat, Irvington Place, Lots 1-755, an RCP Project, C9-02-31, S06-019 - Revision #1 ("Tentative Plat")*. The PDR will extend the approval period of the Tentative Plat from May 9, 2016 to a date five years from the date of Council approval. Seller has submitted its PDR application to extend the approval period of the Tentative Plat and paid its PDR application fee. Seller will not withdraw its PDR application or take any other affirmative action to cause the Council to disapprove Seller's PDR.

8.2 Waiver of Contingency. In the event that the PDR is not approved prior to the Closing Date, and Buyer is prepared to pay the entire Purchase Price at Closing pursuant to section

4.3, then Seller shall proceed to Closing on the Closing Date, and the PDR Contingency shall be deemed waived.

8.3 Seller's Right to Terminate. In the event that the PDR is not obtained prior to Closing, the Seller may (i) waive the PDR contingency and proceed to Closing; or (ii) terminate this Agreement, but only if Buyer is not prepared to pay the entire Purchase Price at Closing pursuant to section 4.3, or (iii) Seller and Buyer may agree in writing to extend the Closing Date to provide additional time for the PDR to be obtained.

9. Contingencies to Obligation to Close.

9.1 Substitute Assurance Agreement - Buyer. Buyer's obligation to Close is contingent upon the City of Tucson having entered into a substitute assurance agreement in form acceptable to Buyer and Seller.

9.2 Substitute Assurance Agreement - Seller. Seller's obligation to Close is contingent upon the City of Tucson and Buyer having entered into a substitute assurance agreement in form acceptable to Buyer and Seller.

9.3 Release of School Fee Agreement. Buyer's obligation to close is contingent upon the Tucson Unified School District having released all of the Property from the School Fee Agreement between the Tucson Unified School District and Stardust referenced in the Notice of School Fee Agreement recorded at Docket 13179, Page 2270 of the records of the Pima County Recorder.

9.4 Owner's Title Policy. Buyer's obligation to close is contingent upon Title Company being unconditionally prepared to issue its Standard Owner's Title Insurance Policy for the Property, in the amount of the Purchase Price, subject only to (i) the standard printed exceptions in the policy, and (ii) the exceptions set forth on Exhibit B and any other title exceptions approved or deemed approved by Buyer pursuant to section 7.3 and any matters created, suffered or assumed by Buyer.

9.5 Lender's Title Policy. If Buyer is proceeding pursuant to section 4.1, Seller's obligation to close is contingent upon Title Company being unconditionally prepared to issue to Stardust its Lender's Title Insurance Policy for the Property, in the amount of the Note, subject only to (i) the standard printed exceptions in the policy, and (ii) the exceptions set forth on Exhibit B.

10. Closing.

10.1 Closing Date. The Closing of the sale of the Property to Buyer (the "Closing") will take place at the office of Title Company on or before the Closing Date, unless extended pursuant to this Agreement, or by mutual agreement of the Parties. Notwithstanding the foregoing or any other provision of this Agreement, if the Closing has not occurred by August 15, 2014, either party may cancel or terminate this Agreement by written notice to the other party and the Title Company, and provided no default has occurred and is continuing, Buyer and Seller will have no other rights or obligations under this Agreement, except for any obligations, liabilities and indemnities that expressly survive termination of this Agreement.

10.2 Deliveries by Buyer at Closing. At Closing, Buyer shall deliver to Seller through Escrow the following:

10.2.1 The Down Payment, the executed Note and the Deed of Trust, if Buyer is proceeding pursuant to section 4.1;

10.2.2 The entire Purchase Price if Buyer is proceeding pursuant to section 4.3;

10.2.3 A properly completed and executed Form 8038-G to be filed with the Internal Revenue Service and any other applicable governmental authority; and

10.2.4 Such additional documents as Seller or Escrow Agent may reasonably require to effectuate the purchase.

10.3 Deliveries by Seller at Closing. At Closing, Seller deliver to Buyer through Escrow the following:

10.3.1 An executed Special Warranty Deed in the form of Exhibit E, conveying fee simple title to the Property to Buyer;

10.3.2 One or more assignments of all the water rights and well registrations certificated or claimed in which Seller has an interest and appurtenant to the Property, if any, and all certificated or claimed Grandfathered Type 2 water rights, if any;

10.3.3 A certification of non-foreign status; and

10.3.4 Such additional documents as Buyer or Escrow Agent may reasonably require to effectuate the purchase.

10.4 Delivery of Possession. Seller shall deliver possession of the Property to Buyer at Closing.

11. Seller's Covenants.

11.1 No Personal Property. No personal property is being transferred pursuant to this Agreement. Seller represents that as of closing there will be no personal property owned by Seller located on the Property.

11.2 No Salvage. Seller shall not salvage or remove any fixtures, improvements, or vegetation from the Property, but this does not prohibit Seller from removing personal property prior to the Closing. In addition, prior to Closing, the Property will not be materially degraded or otherwise materially changed in any aspect by Seller.

11.3 Risk of Loss for Damage to Improvements. Seller bears the risk of loss or damage to the Property prior to Closing. After Closing, the risk of loss or damage to the Property rests with Buyer.

11.4 Government Approvals. Seller shall obtain all government approvals required for Seller to close the sale of the Property, if any.

11.5 Use of Property by Seller. Seller shall, prior to the Closing, use the Property on a basis substantially comparable to Seller's historical use thereof. Seller shall maintain the Property in substantially the same condition as it is presently in, ordinary wear and tear and casualty damage excepted, and without liens or encumbrances created by Seller that Seller will be able to cause to be released before the Closing.

11.6 No Encumbrances. Seller shall not encumber the Property with any lien that Seller will be unable to cause to be released before Closing, and Seller shall not be entitled to sell or exchange all or any portion of the Property before Closing.

11.7 Reports. Seller shall make available to Buyer all documents relating to the entitlements and physical condition of the Property that it has in its possession, including any and all surveys, information regarding wells and water rights, and environmental reports.

12. **Buyer's Covenants.** Buyer will not install or make any improvements to the Property, or make any changes to the existing zoning and platting of the Property, prior to paying the Purchase Price in full. This covenant will survive the Closing.

13. **Environmental.**

13.1 Environmental Representation. Except as disclosed in any environmental reports provided by Seller to Buyer or in the environmental reports previously obtained by Buyer or obtained by Buyer as part of its inspection of the Property pursuant to Section 13.2 below, to Seller's knowledge, there are no pollutants, contaminants, toxic or hazardous substances, wastes or materials stored, used or located on the Property or within any surface or subsurface waters thereof; there are no underground tanks located on the Property; the Property is in compliance with all Federal, state and local environmental laws, regulations and ordinances; and no legal action relating to violations of environmental laws has been commenced or threatened with respect to the Property.

13.2 Environmental Inspection Rights.

13.2.1 From and after the Effective Date and during the term of this Agreement, Seller shall permit Buyer to conduct such visual and non-invasive inspections of the Property as the Buyer deems necessary to determine the environmental condition of the Property. Buyer acknowledges that Seller disclosed to Buyer that unknown third parties have dumped trash, debris and other materials on the Property and Buyer will undertake its own due diligence investigation and determination of the environmental condition of the Property. If the environmental inspection report recommends further testing or inspection, the Parties hereby agree to extend the date of Closing to at least thirty (30) days after the report for such additional testing or inspection is completed on behalf of Buyer, but not later than an additional one hundred eighty (180) day extension. The scope and all of the terms and conditions of any soil borings, sampling or other invasive testing on the Property must be approved by Seller in its sole and absolute discretion, including, without limitation, insurance requirements, split sampling, reporting requirements, etc. If Seller approves any such

invasive testing, Buyer shall promptly repair any damage to the Property resulting therefrom and replace, refill and regrade any holes made in, or excavations of, any portion of the Property so that the Property shall be in substantially the same condition that it existed in prior to such inspections. If Seller does not approve such invasive testing, Buyer can terminate this Agreement.

13.2.2 If any environmental inspection reveals the presence of contamination or the need to conduct an environmental cleanup, Buyer shall provide written notice to Seller, prior to Closing, of any items disapproved by Buyer as a result of Buyer's inspection (the "**Objection Notice**"). If Buyer sends an Objection Notice, Seller may, within five (5) business days of receipt of the Objection Notice, notify Buyer if Seller is willing to cure any of the items to which Buyer objected (the "**Cure Notice**"). If Seller elects not to send Buyer a Cure Notice or if Seller's Cure Notice is not acceptable to Buyer, then Buyer may elect to terminate this Agreement, in which case the Agreement will be terminated and of no further force and effect.

14. **Broker's Commission.** No broker or finder has been used and Buyer owes no brokerage or finders fees related to this Agreement. Seller has sole responsibility to pay all brokerage or finders fees to any agent employed by Seller. Each Party will indemnify, defend and hold harmless the other Party against any claim, demand or suit for any brokerage commission, finder's fee or similar charge in respect to the execution of this Agreement or the transaction contemplated hereby based on any act by or agreement or contract with such Party.

15. **Default, Remedies, and Conditions Precedent.** In the event of a default by Seller under this Agreement, Buyer, as its sole and exclusive remedy may elect by written notice to: (i) cancel this Agreement by written notice to Seller and Title Company, in which event Buyer and Seller will have no other rights or obligations under this Agreement, except for any obligations, liabilities and indemnities that expressly survive termination of this Agreement; or (ii) pursue any action for specific performance. If Buyer elects to pursue specific performance in accordance with clause (ii) above, Buyer shall have the right to file such action for specific performance only within one hundred twenty (120) days of Seller's alleged default hereunder. If Buyer does not file an action for specific performance within one hundred twenty (120) days of Seller's alleged default hereunder, Buyer shall be deemed to have elected to terminate this Agreement pursuant to clause (i) above. In the event of a default by Buyer under this Agreement, Seller, as its sole and exclusive remedy may elect by written notice to: (i) cancel this Agreement by written notice to Buyer and Title Company, in which event Seller and Buyer will have no other rights or obligations under this Agreement, except for any obligations, liabilities and indemnities that expressly survive termination of this Agreement; or (ii) pursue any action for specific performance. If Seller elects to pursue specific performance in accordance with clause (ii) above, Seller shall have the right to file such action for specific performance only within one hundred twenty (120) days of Buyer's alleged default hereunder. If Seller does not file an action for specific performance within one hundred twenty (120) days of Buyer's alleged default hereunder, Seller shall be deemed to have elected to terminate this Agreement pursuant to clause (i) above. Neither Party is entitled to exemplary, punitive, special, indirect or consequential damages.

16. **Exhibits.** The following Exhibits are fully incorporated herein as if set forth at length. To the extent that any Exhibits to this Agreement are not available at the execution thereof, they will be

added by the Parties prior to Closing and will be in form and substance reasonably satisfactory to the Parties.

<u>Exhibit A</u>	Description of Property
<u>Exhibit A-1</u>	Depiction Showing Property
<u>Exhibit B</u>	Intentionally Omitted
<u>Exhibit C</u>	Intentionally Omitted
<u>Exhibit D</u>	Intentionally Omitted
<u>Exhibit E</u>	Form of Deed for Property
<u>Exhibit F</u>	Form of Non-recourse Promissory Note
<u>Exhibit G</u>	Form of Non-recourse Deed of Trust
<u>Exhibit H</u>	Amortization Schedule
<u>Exhibit I</u>	Form 8038-G
<u>Exhibit J</u>	Note Register

17. **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:

17.1 Notices.

17.1.1 *Writing.* All notices required or permitted to be given hereunder must be in writing and mailed by first class, registered, certified or overnight mail, return receipt requested, postage prepaid, or transmitted by electronic mail, facsimile, or hand delivered, addressed to Seller's Address or Buyer's Address. Any notice to Seller shall also be given to Jay S. Kramer, Fennemore Craig, P.C., 2394 East Camelback Road, Suite 600, Phoenix, AZ 85016-3429, E-Mail: jkramer@fcclaw.com.

17.1.2 *Receipt.* If mailed, all such notices, demands, requests, or other communications are deemed received upon the expiration of seventy-two (72) hours after deposit in the U.S. mail as aforesaid. Notice served personally or by electronic mail or facsimile is deemed served upon delivery thereof to the addressee. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given is deemed to be receipt of the notice, demand or request sent. Any party entitled to notices hereunder may from time to time designate to the other parties, in writing and given in accordance with this Section, a different address for service of notice.

17.2 Governing Law; Waiver of Jury Trial. This Agreement is subject to, and interpreted by and in accordance with, the laws of the State of Arizona. Any action to be brought under this Agreement must be filed and maintained in a court in Pima County, Arizona. Seller and Buyer hereby agree to waive their rights to a jury trial of any claim, counterclaim or cause of action based upon or arising out of this Agreement, the documents delivered at the Closing or any dealings between them relating to the subject matter of the Agreement. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement or the documents delivered at the Closing, including, without limitation, contract claims, tort claims, breach of duty claims and all other common law and statutory claims.

17.3 Entire Agreement. This Agreement is the entire agreement of the Parties respecting the subject matter hereof. There are no other agreements, representations or warranties, whether oral or written, respecting the subject matter hereof.

17.4 Interpretation. This Agreement, and all the provisions of this Agreement, is deemed drafted by all of the Parties. This Agreement will not be interpreted strictly for or against any Party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of this Agreement.

17.5 No Representations. Each Party has entered into this Agreement based solely upon the agreements, representations and warranties expressly set forth herein and upon that Party's own knowledge and investigation. Neither Party has relied upon any representation or warranty of any other Party except any such representations or warranties as are expressly set forth herein.

17.6 Signing Authority. Each of the persons signing below on behalf of a Party represents and warrants that the signer has full requisite power and authority to execute and deliver this Agreement on behalf of the Party for whom the signer signs and to bind such Party to the terms and conditions of this Agreement.

17.7 Counterparts. This Agreement may be executed in counterparts, each of which is effective as an original. This Agreement becomes effective only when all of the Parties have executed the original or counterpart hereof. This Agreement may be executed and delivered by a facsimile transmission or email of a counterpart signature page hereof.

17.8 Attorney's Fees and Costs. In any action brought by a Party to enforce the obligations of any other Party, the prevailing Party is entitled to collect from the opposing Party to such action such Party's reasonable litigation costs and attorney's fees and expenses, including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation in addition to all other relief, all of which will be set by a judge and not by a jury, to which the prevailing Party may be entitled.

17.9 Binding Effect. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns. Buyer may not assign this Agreement or any of Buyer's rights hereunder.

17.10 No Third Party Beneficiaries. This is not a third party beneficiary contract. No person or entity other than a Party signing this Agreement has any rights under this Agreement, except as expressly provided in this Agreement.

17.11 Amendment. This Agreement may be amended or modified only in a writing signed by the Parties, which specifically references this Agreement.

17.12 No Partnership. Nothing in this Agreement creates a partnership or joint venture, or authorizes any Party to act as agent for or representative of any other Party.

17.13 No Waiver. The failure of a Party to require full or timely performance of any obligation arising under this Agreement (whether on a single occasion or on multiple occasions) is

not a waiver of any such obligation. No such failure gives rise to any claim of estoppel, laches, course of dealing, amendment of this Agreement by course of dealing, or other defense of any nature to any obligation arising hereunder.

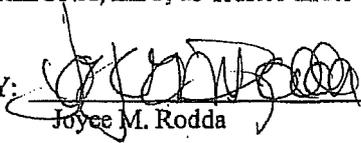
17.14 Time of the Essence. Time is of the essence with respect to each obligation arising under this Agreement.

17.15 Conflict of Interest. This Agreement is subject to cancellation within three (3) years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of Buyer is, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

[Signatures appear on the following pages]

SELLER:

**LANDMARK TITLE ASSURANCE AGENCY OF
ARIZONA, LLC, as Trustee under Trust 18344-T**

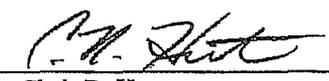
BY: 

Joyce M. Rodda

Date: 6/25/14

ITS: Trust Officer

**STARDUST-REIF NO.3, L.L.C.,
as Beneficiary of the Seller Trust**

BY: 

Chris B. Heeter

Date: 6/25/14

ITS: Manager

BUYER:

PIMA COUNTY

Chair, Board of Supervisors

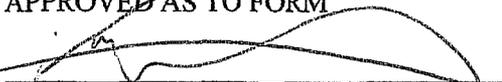
Date

ATTEST

Clerk of Board

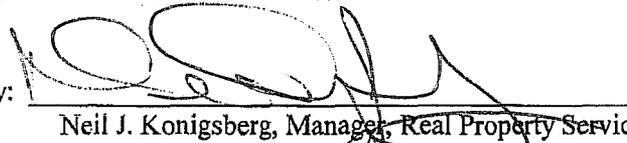
Date

APPROVED AS TO FORM

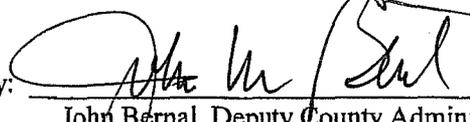


Tobin Rosen, Deputy County Attorney

APPROVED AS TO CONTENT

By: 

Neil J. Konigsberg, Manager, Real Property Services

By: 

John Bernal, Deputy County Administrator, Public Works

Parcels #132-28-0010 thru 7630 and 132-19-148A

09 June 2014

EXHIBIT "A"
LEGAL DESCRIPTION
IRVINGTON PLACE

PARCEL 1:

Lots 1 through 755, an RCP Project, Blocks A, B and C; and Common Area "A", (Landscape Open Space) Common Area "B" (Active Open Space), Common Area "C" (Retention/Detention Basin), Common Area "D" (Drainageways) and Common Area "E" (Private Street) of IRVINGTON PLACE, according to the plat of record in the Office of the County Recorder of Pima County, Arizona, recorded in Book 62 of Maps, Page 63.

PARCEL 2:

A portion of the Northwest Quarter of Section 32 and the Northeast Quarter of Section 31, Township 14 South, Range 14 East of the Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at a flush brass cap at the northwest corner of said Section 32, from which a brass cap in a hand hole at the north quarter corner of said Section 32 bears North 89 degrees 03 minutes 31 seconds East (an assumed bearing) at a distance of 2647.34 feet;

THENCE South 01 degrees 00 minutes 00 seconds East, along the west line of the Northwest Quarter of said Section 32, for a distance of 1509.14 feet to a point on the Northerly line of Julian Wash, as recorded in Docket 2380, Page 224, Pima County Records, said point being the **POINT OF BEGINNING**;

THENCE South 84 degrees 55 minutes 28 seconds West, along said northerly line, for a distance of 60.15 feet to a point on the west line of the east 60.00 feet of the Northeast Quarter of said Section 31;

THENCE North 01 degrees 00 minutes 00 seconds West, along said west line, for a distance of 321.45 feet to a point on the southerly line of the Interstate 10 right of way;

THENCE North 45 degrees 06 minutes 09 seconds East, along said southerly line, for a distance of 166.53 feet to a point on the east line of the west 60.00 feet of the Northwest Quarter of said Section 32;

THENCE North 57 degrees 54 minutes 16 seconds East, along the southerly line of said Interstate 10 right of way, for a distance of 226.57 feet;

THENCE North 84 degrees 35 minutes 45 seconds East, along said southerly line, for a distance of 242.04 feet;

THENCE South 57 degrees 06 minutes 59 seconds East, along said southerly line, for a distance of 316.55 feet to a point on the northerly line of the Diversion Channel as recorded in Docket 4629, page 180, Pima County Records;

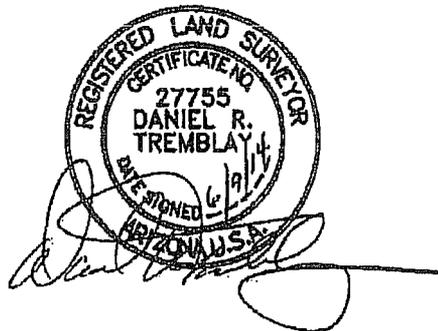
THENCE South 34 degrees 06 minutes 25 seconds West, along said northerly line, for a distance of 190.85 feet to the beginning of a curve, concave to the northwest, the center of which bears North 55 degrees 53 minutes 35 seconds West at a distance of 525.00 feet;

THENCE southeasterly, along said northerly line and the arc of said curve, through a central angle of 50 degrees 47 minutes 32 seconds for a distance of 465.41 feet to a point of tangency;

THENCE South 84 degrees 53 minutes 57 seconds West, along said northerly line and the westerly prolongation thereof, for a distance of 257.09 feet to a point on the west line of the Northwest Quarter of said Section 32;

THENCE North 01 degrees 00 minutes 00 seconds West, along said west line, for a distance of 4.48 feet to the **POINT OF BEGINNING**.

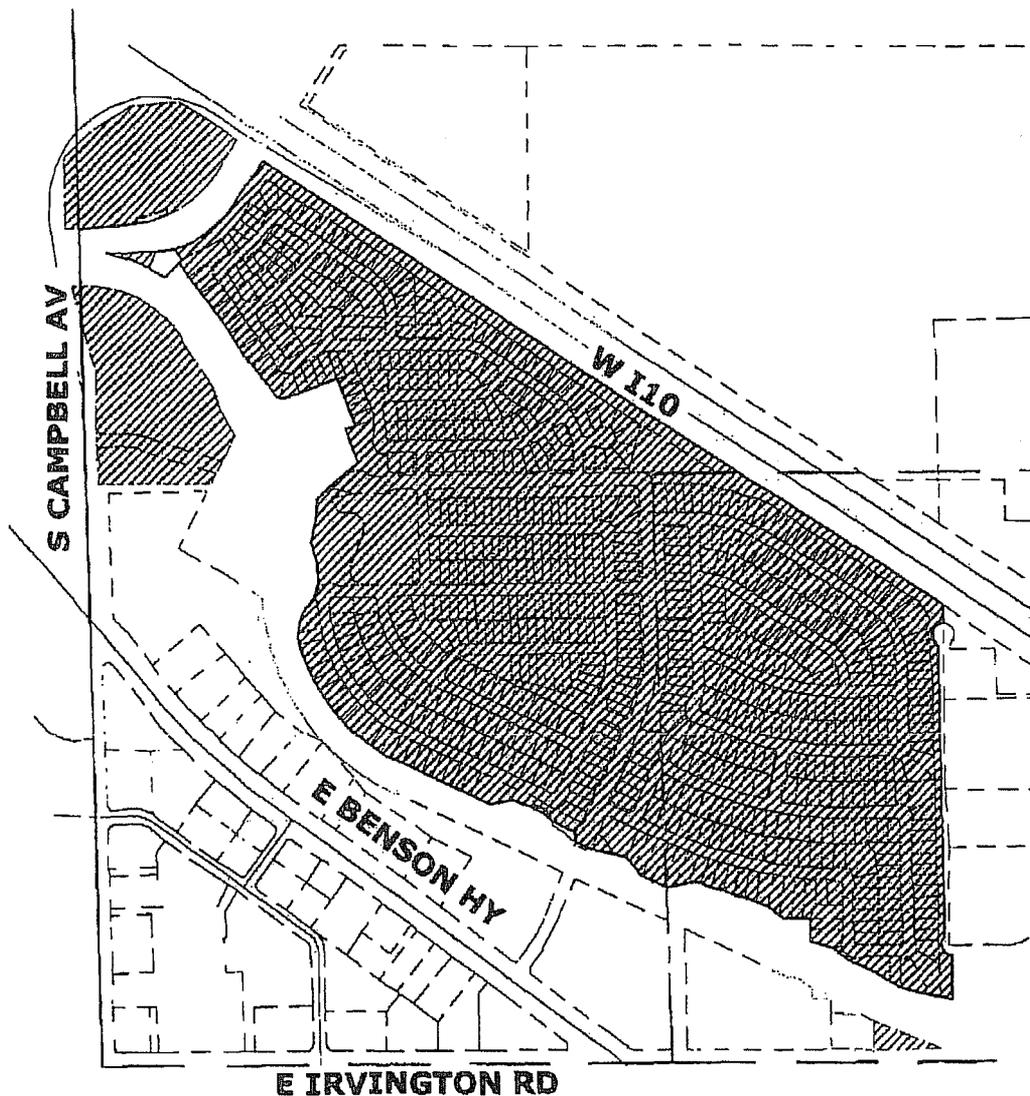
EXCEPT therefrom all that portion of above described **PARCELS 1 & 2** conveyed to Pima County by Sequence No. 20140760667



Expires 31 March 2015

EXHIBIT A-1

DEPICTION OF EXHIBIT "A"



= PARCELS 1 & 2. AREA IS 166.714 ACRES +/-.

N



PIMA COUNTY SURVEY

A PORTION OF SECTIONS 31 & 32,
TOWNSHIP 14 SOUTH, RANGE 14 EAST,
GILA AND SALT RIVER MERIDIAN,
PIMA COUNTY, ARIZONA

Scale: 1" = 750'

Date: 9 June 2014

Drawn By: AJI

Sheet 1 of 1

Exhibit B
Intentionally Omitted

Exhibit C
Intentionally Omitted

Exhibit D
Intentionally Omitted

**Exhibit E
Form of Deed for Property**

WHEN RECORDED RETURN TO:

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **LANDMARK TITLE ASSURANCE AGENCY OF ARIZONA, LLC**, an Arizona limited liability company, solely in its capacity as Trustee of Trust No. 18344-T (“Grantor”), hereby grants, sells and conveys to **PIMA COUNTY**, a political subdivision of the State of Arizona (“Grantee”), the following described property situate in Pima County, Arizona (the “Property”):

SEE LEGAL DESCRIPTION ON EXHIBIT A ATTACHED

Subject to calendar year 2014 taxes and other assessments; reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, reservations, declarations, obligations, liabilities and other matters as may appear of record; such matters as would be disclosed by a proper inspection or accurate ALTA survey of the Property; and the applicable zoning and use regulations of any municipality, county, state or the United States, Grantor warrants title to the Property as against the acts of Grantor and none other, subject to the matters described above.

Pursuant to Arizona Revised Statutes § 33-404, the names and addresses of the beneficiary of Grantor are as follows: Stardust REIF No. 3, L.L.C., 6730 North Scottsdale Road, Suite 230, Scottsdale, Arizona 85253.

This Deed is exempt from the provisions of Arizona Revised Statutes § 11-1133 pursuant to Arizona Revised Statute § 11-1134.A.3.

**[THE REMAINDER OF THIS PAGE IS
LEFT INTENTIONALLY BLANK]**

DATED as of the _____ day of _____, 2014.

GRANTOR:

LANDMARK TITLE ASSURANCE AGENCY OF ARIZONA, LLC, an Arizona limited liability company, solely in its capacity as Trustee of Trust No. 18344-T

By: _____

Name: _____

Title: _____

STATE OF ARIZONA)
) §§
County of Pima)

The foregoing instrument was executed before me, the undersigned Notary Public, this _____ day of _____, 2014 by _____, the _____ of **LANDMARK TITLE ASSURANCE AGENCY OF ARIZONA, LLC**, an Arizona limited liability company, solely in its capacity as Trustee of Trust No. 18344-T, on behalf thereof.

Notary Public

(Seal)

Exhibit A
Property Description

Exhibit F
Form of Non-recourse Promissory Note

NON-RECOURSE PROMISSORY NOTE

\$7,000,000.00

_____, 2014
Tucson, Arizona

FOR VALUE RECEIVED, PIMA COUNTY, ARIZONA, a political subdivision of the State of Arizona ("Borrower"), promises to pay to **STARDUST-REIF NO. 3, L.L.C.**, an Arizona limited liability company, the registered owner of this Note or any registered assign (collectively, "Lender"), at 6730 North Scottsdale Road, Suite 230, Scottsdale, Arizona 85253, or by wire transfer to Lender's bank account or at such other place as Lender may from time to time designate in writing, in lawful money of the United States of America, the principal sum of **SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00)**, together with interest thereon and such other amounts as may be payable by Borrower to Lender pursuant to the terms and conditions of this Note, in accordance with the following terms and conditions:

1. **Interest.** Principal of this Note shall bear interest, from the date of this Note until repaid to Lender, at the per annum rate of six percent (6.0%) (the "Interest Rate"), calculated on the basis of a 360-day year consisting of twelve 30-day months, and for prepayments only the actual number of days elapsed during any partial month for which interest is being charged; *provided*, that if any payment due hereunder is not paid on the due date the principal of this Note shall bear interest at the per annum rate of ten percent (10.0%) (the "Default Rate") from the due date of such payment until the default is cured.

2. **Payments of Principal and Interest.** Subject to the provisions of Section 6 hereof regarding prepayment of principal of this Note, and the provisions of Section 10 hereof regarding the rights and remedies of Lender upon the occurrence of an Event of Default, Borrower will pay Lender level annual principal and interest payments in the amount of **ONE MILLION SIX HUNDRED SIXTY ONE THOUSAND SEVEN HUNDRED SEVENTY-FOUR AND 80/100 DOLLARS (\$1,661,774.80)** on _____ 1 of each year beginning _____, 2015.

3. **Final Maturity.** Subject to the provisions of Section 10 hereof regarding the rights and remedies of Lender upon the occurrence of an Event of Default, the entire unpaid principal balance of this Note, together with all accrued and unpaid interest and all other amounts then due Lender under this Note, shall be due and payable in full on _____, 2019 (the "Maturity Date").

- _____
1 Month and day of Closing to be inserted.
2 Month and day of Closing to be inserted.
3 Month and day of Closing to be inserted.

4. **Application of Payments.** All payments made under this Note or the indebtedness evidenced hereby shall be applied by Lender in the following order of priority: (a) first, to any late charges, costs, fees or other amounts then due and payable to Lender under this Note or the Deed of Trust (as defined herein) (other than the principal of this Note and accrued and unpaid interest thereon); (b) second, to accrued and unpaid interest on the principal balance of the Note; and (c) last, to the payment of principal of this Note.

5. **Late Charge.** It is recognized by Borrower that, should the scheduled installment payments not be paid when the same becomes due and payable, Lender will incur extra expenses for the handling of delinquent installment payments and the loss of the use of the money due, the exact amount of such extra expense being impossible to ascertain, but that a charge equal to One Hundred Dollars (\$100.00) for each day of such delinquent installment payment from the due date until paid would be a fair approximation of the expense so incurred by Lender for the handling of delinquent installment payments and the loss of the use of the money due. Therefore, if any scheduled installment payment is not paid on or before ten (10) days after the due date thereof, without further notice, and without prejudice to the right of Lender to collect any other amounts provided to be paid herein or to declare a default hereunder, and as Lender's sole monetary recovery to cover such expense incurred in the handling of delinquent installment payments and the loss of the use of the money due, the delinquent installment payment will be subject to a late charge equal to One Hundred Dollars (\$100.00) for each day of such delinquent installment payment from the due date until paid. The late charge shall, at Lender's option, either (i) upon demand by Lender, be paid by Borrower to Lender in addition to such delinquent installment payment, or (ii) be deducted from the amount of such delinquent installment payment when made, in which event such amount shall be added to the indebtedness evidenced by this Note and shall be paid by Borrower to Lender upon demand.

6. **Prepayments.** Borrower may voluntarily prepay, without any prepayment premium or penalty, all or any portion of the principal balance of this Note, together with accrued and unpaid interest on the portion of the principal balance of this Note that is being repaid. All such prepayments shall be applied in the manner provided in Section 4 above and the amount applied to the payment of principal of this Note shall be applied in the inverse order of maturity.

7. **Security; Note is Non-Recourse.** This Note is secured by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust") of even date herewith from Borrower in favor of Lender encumbering certain real property located in Pima County, Arizona, as more particularly described therein (the "Property"). In the event of any default by Borrower under this Note, except as otherwise provided in Section 13 below, Lender shall look solely to Borrower's interest in the Property for satisfaction of the Borrower's obligations under this Note. Except as otherwise provided in Section 13 below, in the event of foreclosure or non-judicial sale of the Property pursuant to the Deed of Trust, Lender shall not pursue any action for any deficiency against Borrower. Except as otherwise provided in Section 13 below, Lender specifically releases Borrower, its officers, employees, elected officials and agents from and against any personal liability under this Note.

8. **Contracted For Rate of Interest.** The contracted for rate of interest of the loan contemplated hereby, without limitation, shall consist of the following:

(a) The Interest Rate, calculated and applied to the principal balance of this Note in accordance with the provisions of this Note and the Deed of Trust;

(b) The Default Rate calculated and applied to the principal balance in accordance with the provisions of this Note and the Deed of Trust; and

(c) All Additional Sums (as hereinafter defined), if any.

Borrower agrees to pay an effective contracted for rate of interest which is the sum of the Interest Rate referred to in Section 8(a) above, plus any additional rate of interest resulting from the application of the Default Rate referred to in Section 8(b) above, and the Additional Sums, if any, referred to in Section 8(c) above.

9. **Additional Sums.** All fees, charges, goods, things in action or any other sums or things of value (other than the interest resulting from the Interest Rate and the Default Rate), paid or payable by Borrower (collectively, the "Additional Sums"), whether pursuant to this Note or any other document or instrument in any way pertaining to this lending transaction, or otherwise with respect to this lending transaction, that, under the laws of the State of Arizona, may be deemed to be interest with respect to this lending transaction, for the purpose of any laws of the State of Arizona that may limit the maximum amount of interest to be charged with respect to this lending transaction, shall be payable by Borrower as, and shall be deemed to be, additional interest, and for such purposes only, the agreed upon and "contracted for rate of interest" of this lending transaction shall be deemed to be increased by the rate of interest resulting from the Additional Sums. Borrower understands and believes that this lending transaction complies with the usury laws of the State of Arizona; however, if any interest or other charges in connection with this lending transaction are ever determined to exceed the maximum amount permitted by law, then Borrower agrees that (a) the amount of interest or charges payable under this lending transaction shall be reduced to the maximum amount permitted by law and (b) any excess amount previously collected from Borrower in connection with this lending transaction that exceeded the maximum amount permitted by law, shall be credited against the principal balance of this Note then outstanding. If the outstanding principal balance hereunder has been paid in full, the excess amount paid shall be refunded to Borrower and Borrower agrees to accept such refund.

10. **Event of Default: Acceleration.** Upon the occurrence of any of the following acts, omissions or events ("Event of Default"), the principal of this Note, together with accrued and unpaid interest thereon, and all other amounts outstanding under this Note and the Deed of Trust shall, at the option of Lender, be immediately due and payable:

(a) The failure of Borrower to make any interest or principal installment payment due under this Note (including the interest and principal installment payment due on the Maturity Date), whether at maturity, by acceleration, or otherwise, in accordance with the terms of this Note; or

(b) The failure of Borrower to pay any late charges, costs, fees or other amounts then due and payable to Lender under this Note or the Deed of Trust (other than the installment

payments referenced in subsection (a) above) in accordance with the terms of this Note or the Deed of Trust, on or before ten (10) days after Borrower's receipt of written notice of such non-payment; or

(c) The failure of Borrower to punctually and properly perform any other covenant, condition or agreement contained in this Note or the Deed of Trust; or

(d) The Substitute Agreement to Construct Subdivision Improvements Third Party Trust among Borrower, the City of Tucson (the "City") and Title Security Agency of Arizona, LLC ("Assurance Trustee") with respect to the required subdivision improvements to the Property is terminated or revoked, and Borrower has not tendered substitute assurances acceptable to the City for the completion of the required subdivision improvements to the Property; or

(e) The Trust Agreement between Borrower and Assurance Trustee with respect to the Property is terminated or revoked for any reason; or

(f) The sale, transfer, conveyance, assignment or other disposal of, or further encumbrance of, all or any part of the Property in violation of Paragraph 10 of the Deed of Trust; or

(g) Any representation or warranty of Borrower set forth in this Note or the Deed of Trust is false or misleading in any material respect when made; or

(h) Any material default under the Purchase and Sale Agreement dated June ____, 2014 between Lender and Borrower (the "Agreement") or any agreement or instrument executed by Borrower in connection with the Agreement, and the failure to cure such material default on or before thirty (30) days after Borrower's receipt of written notice of such failure from Lender; or

(i) A writ of execution or attachment or any similar process is issued or levied against all or any part of or interest in the Property, and such execution, attachment or similar process is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy.

11. **Time of Essence.** Time is of the essence of this Note and each provision hereof.

12. **Waiver by Lender.** No delay on the part of Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege hereunder shall preclude other or further exercise thereof, or be deemed to establish a custom or course of dealing or performance between the parties hereto, or preclude the exercise of any other right, power or privilege.

13. **Attorneys' Fees.** If there is any litigation, arbitration or other proceedings relating to the enforcement of this Note or the Deed of Trust, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees, court costs, expert witness fees and other litigation related expenses arising out of or related to such enforcement action.

14. **Waivers of Borrower.** Borrower (for itself and its successors and assigns), and any endorsers and guarantors hereof, by virtue of such endorsement or guaranty, respectively, hereby

waive, except as is set forth herein, presentment for payment, protest and demand, notice of protest, demand and of dishonor and nonpayment of this Note, and expressly agree that this Note, or any payment hereunder, may be extended from time to time before, at, or after maturity of the obligations evidenced hereby, without in any way affecting the liability of Borrower hereunder, or the validity of any mortgage, pledge, lien or security interest given to secure payment hereof.

15. **Governing Law; Waiver of Jury Trial.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to its conflict of laws rules. Lender and Borrower acknowledge and agree that any controversy which may arise under this Note or the Deed of Trust or with respect to the transactions contemplated hereby or thereby would be based upon difficult and complex issues and, therefore, the parties agree that any lawsuit arising out of any such controversy shall be tried in a court of competent jurisdiction by a judge sitting without a jury.

16. **Tax-Exempt Interest.** Borrower represents that this Note is not an obligation of a type offered by Borrower to the public. Borrower will nevertheless maintain a register in the form attached as Exhibit J to the Acquisition Agreement, without representation or warranty that the register meets the requirements of Section 149 of the Internal Revenue Code of 1986, as amended (the "Code"), or that Section 149 of the Code is or is not applicable to this Note. This Note may be assigned or transferred by Lender only by surrender of this Note and either the reissuance by Borrower of this Note to the new holder or the issuance by Borrower of a new promissory note (payable on the same terms and conditions as the surrendered Note to the new holder). This Note can be transferred or assigned only as a whole.

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the date first above written.

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

By: _____
Name: Sharon Bronson
Title: Chair, Board of Supervisors

ATTEST:

Robin Brigode, Clerk of the Board

APPROVED AS TO FORM:

Tobin Rosen, Civil Deputy County Attorney

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the attached Note and do(es) hereby irrevocably constitute and appoint _____
_____, attorney, to transfer the same on the registration books of the
Borrower, with full power of substitution in the premises.

Date: _____

_____, a _____

By: _____

Name: _____

Title: _____

Exhibit G
Form of Non-recourse Deed of Trust

WHEN RECORDED MAIL TO:

Jay S. Kramer
Fennemore Craig, P.C.
2394 East Camelback Road, Suite 600
Phoenix, AZ 85016-3429

DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

DATE: _____, 2014

TRUSTOR: PIMA COUNTY, ARIZONA

Attn: _____

Trustor's
Organizational I.D.: _____

BENEFICIARY: STARDUST-REIF NO. 3, L.L.C.
6730 North Scottsdale Road, Suite 230
Scottsdale, Arizona, 85253
Attn: Chris B. Heeter

TRUSTEE: FIRST AMERICAN TITLE INSURANCE COMPANY
2425 East Camelback, Suite 300
Phoenix, Arizona 85016

PROPERTY in Pima County, State of Arizona, described as:

See **Exhibit "A"** attached hereto and incorporated herein by
reference.

This Deed of Trust is made among Trustor, Beneficiary and Trustee who agree as follows:

1. **Grant and Conveyance.** For value received, Trustor irrevocably grants, conveys and assigns to Trustee in Trust, with power of sale, certain real property located in Pima County, Arizona, and more particularly described in Exhibit A attached hereto (the "Land"), together with the following: (i) all buildings, structures and improvements located on the Land, including, without limitation, all irrigation ditches, gates, valves, pumps, tanks, and wells; (ii) all of Trustor's right, title and interest in and to all appurtenances, hereditaments, interests, privileges, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights, and air rights (including

any grandfathered groundwater or other groundwater or surface water rights) appurtenant to the Land, including, without limitation, all irrigation ditches, gates, valves, pumps, tanks, and wells, if any; (iii) all of Trustor's right, title and interest in and to all oil, gas, and mineral rights relating to the Land not previously reserved; (iv) all of Trustor's right, title and interest, on a non-exclusive basis, in and to all plans, specifications, plats, assessments, agreements, reports, studies, and surveys relating to the Land or improvements located thereon, and all warranties applicable thereto; (v) all of Trustor's right, title and interest in and to any other rights or privileges appurtenant to the Land or, on a non-exclusive basis, any other rights or privileges used in connection with the Land; and (vi) all of Trustor's right, title and interest as beneficiary in, to and under that certain Trust Agreement No. _____ dated _____, 2014 (the "Trust") in which Landmark Title Assurance Agency of Arizona, LLC ("Assurance Trustee) is the trustee and Trustor is the beneficiary, and any permitted amendments, modifications and supplements thereto, and restatements and replacements thereof (the "Trust Agreement" and together with the Land and items (i) through (v) above, the "Property"). All components of the Property are deemed encumbered hereby and are declared to be part of the real estate whether or not physically attached to the Land.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing, in such order of priority as Beneficiary may elect:

(a) Payment of the sum of SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00), which may include, without limitation, future advances of principal made after the date hereof, with interest thereon, extension and other fees, late charges and attorneys' fees, according to the terms of that Non-Recourse Promissory Note of even date herewith, made by Trustor payable to the order of Beneficiary, and all extensions, modifications, renewals or replacements thereof (the "Note"); and

(b) Payment, performance and observance by Trustor of each covenant, condition, provision and agreement contained herein and in the Acquisition Agreement dated _____, 2014 between Trustor and Beneficiary (the "Agreement"), and of all monies expended or advanced by Beneficiary pursuant to the terms hereof, or to preserve any right of Beneficiary hereunder, or to protect or preserve the Trust Property or any part thereof;

All of the indebtedness and obligations secured by this Deed of Trust are hereinafter collectively called the "Obligations Secured". All capitalized terms used herein without definition shall have the meanings attributed to such terms in the Note.

3. Payment of Obligations Secured. Trustor shall perform and pay when due and before delinquency: (a) all Obligations Secured hereby; (b) all liens, taxes, assessments, fines, impositions and charges of every type or nature affecting the Property; and (c) all costs, fees and expenses of this Trust including, without limitation, all fees of Trustee.

4. Maintenance of Property; No Construction. Trustor shall neither commit nor permit to occur any waste upon the Property. Trustor shall keep the Property free of rubbish and other unsightly or unhealthful conditions. Trustor shall neither use nor permit the use of the Property in violation of any applicable statute, ordinance or regulation, including, without limitation, any

Environmental Laws (as defined below). Trustor shall not seek to modify or amend the zoning or other protected development rights related to the Property, or subdivide, plat, dedicate for public use, or restrict or grant any easements relating to the Property. Trustor shall not commence or undertake any grading, development or construction activities on the Property. Trustor shall pay or cause to be paid before delinquent all taxes and assessments of every kind, nature and description levied or assessed on or against the Property, unless exempt from taxation, and, upon request by Beneficiary, shall deliver to Beneficiary, at least ten (10) days before they become delinquent, receipts showing payment of all such taxes and assessments and shall pay when due all dues and charges for water and water delivery, electricity, gas, sewers, waste removal, bills for repairs, and any and all other claims, encumbrances and expenses incident to the ownership of the Property.

5. Protection by Trustor. Trustor shall defend, at Trustor's expense, any action or proceeding purporting to affect Trustor's interest in the Property or the liens, rights or powers of Beneficiary or Trustee, or seeking to impose any liability on Beneficiary or Trustee because of any act or omission of Trustor. Trustor shall and does hereby agree to indemnify and hold Beneficiary and Trustee harmless from any such action or proceeding.

6. Protection by Beneficiary or Trustee; Reimbursement. Beneficiary or Trustee or both of them are authorized at their election to appear in and defend any action or proceeding purporting to affect the Property or the liens, rights or powers of Beneficiary or Trustee; to pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior hereto; and, in exercising any such powers, to pay reasonable expenses, employ counsel, and to pay counsel's reasonable fees and costs. Without obligation to do so, Beneficiary or Trustee may pay any amount or perform any obligation which is required of Trustor hereunder and which is not paid or performed by Trustor within 10 days after receipt of written notice by Trustor with respect to any payment obligation or within 30 days after receipt of written notice by Trustor with respect to any performance obligation (except in either case, in the event of an emergency Beneficiary shall not be required to provide any prior notice), or take any other action or incur any other expense to protect the Property and the security hereof. All amounts so paid or expenses so incurred by Trustee or Beneficiary shall bear interest at the Default Rate from the date incurred until repaid in full, and shall be secured by this Deed of Trust as a lien on the Property. Unless otherwise agreed, such amounts or expenses with interest shall be payable within 10 days after written notice to Trustor requesting such payment. Neither Beneficiary nor Trustee shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any lease, declaration or covenant.

7. Environmental Laws. Trustor agrees to indemnify, defend and hold Beneficiary harmless for, from and against and to reimburse Beneficiary with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses, including but not limited to Beneficiary's costs, of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Beneficiary at any time and from time to time by reason of or arising out of any violation of any "Environmental Law", as hereinafter defined, in effect and any and all matters arising out of any act, omission, event or circumstance first existing or first occurring after the date hereof for which any party may claim Beneficiary has liability (including without limitation the presence on the Land or release from the Land of hazardous substances or solid waste disposed of or otherwise released from the Land), regardless of whether the act, omission, event or circumstance

constituted a violation of any Environmental Law at the time of its existence or occurrence; provided, however, such indemnity shall not apply with respect to matters existing as of the date hereof, or caused by or arising out of the negligence or willful misconduct of Beneficiary. The terms "hazardous substance" and "release" shall have the meanings specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), and the terms "solid waste" and "disposed" shall have the meanings specified in the Resource Conservation and Recovery Act of 1976 ("RCRA"); provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and shall apply retroactively to matters existing prior to the date hereof, and provided further to the extent that state laws establish a meaning for "hazardous substance," "release," "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply and shall apply retroactively to matters existing prior to the date hereof. The provisions of this paragraph shall survive the release of this Deed of Trust or any foreclosure of this Deed of Trust and shall continue thereafter in full force and effect. As used herein, the term "Environmental Law" shall include CERCLA, RCRA, all state and local government law of like nature, as each may now exist or be hereinafter amended, supplemented or replaced and any other laws of the United States of America or state or local government now existing or hereafter enacted which pertain to hazardous or toxic substances on or from the Land, the environmental condition of the Land or the environmental contamination of or from the Land.

8. Assignment of Leases and Rents. As additional security for the Obligations Secured, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during continuance of this Trust, to collect and all rents, issues, profits or income arising from the Property (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 to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his 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, 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, shall not cure or waive any default or notice of Trustee's Sale hereunder or invalidate any act done pursuant to said notice.

9. Security Agreement. That in addition to creating a lien against the Property, this Deed of Trust constitutes a security agreement within the meaning of the Arizona Uniform Commercial Code (the "Code") and is intended to and does hereby create a lien on and security interest in favor of Beneficiary in all fixtures, equipment, property income and other personal property of Trustor, and all replacements and substitutions thereof, including, without limitation, all of Trustor's right, title and interest as beneficiary in, to and under the Trust and the Trust Agreement (the "Personal Property"), at any time situated on or used in connection with the maintenance and operation of the Property, or related to the ownership of the Property. Trustor shall not amend, modify, supplement, restate, replace or terminate the Trust Agreement or Substitute Assurance

Agreement (as defined below) without the prior written consent of Beneficiary. Trustor shall not authorize or instruct Assurance Trustee to take any actions and Assurance Trustee shall not comply with any instructions from Trustor, in each case without the prior written consent of Beneficiary. This Deed of Trust shall be self-operative with respect to such Personal Property, but Trustor shall execute and deliver on demand from Beneficiary one or more security agreements, financing statements and other instruments as Beneficiary may request in order to impose the lien hereof more specifically upon any such Personal Property, the terms and conditions thereof to be as required by Beneficiary, in Beneficiary's sole and absolute discretion. Trustor agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all Personal Property covered by the security interest granted hereby, are encumbered as one unit, and upon default by Trustor under the Note secured hereby, or under this Deed of Trust, or any security agreement given pursuant to this paragraph, in addition to the remedies available to a secured party under the Code, this Deed of Trust and such security interest, at Beneficiary's option, may be foreclosed or sold in the same proceeding, and all of the Property (both real property and personal property) may, at Beneficiary's option, be sold as such in one unit as a going business, subject to the provisions of Arizona Revised Statutes § 33-810(A). The filing of any financing statement relating to any Personal Property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.

10. Due on Sale. Except as otherwise provided in the following sentence, Trustor shall not sell, transfer, convey, assign or otherwise dispose of, or further encumber, all or any part of the Property subject to this Deed of Trust, or any interest therein, voluntarily or involuntarily, by operation of law or otherwise. Immediately after the recordation of this Deed of Trust, Trustor shall convey the Property to Assurance Trustee as the trustee under the Trust Agreement and Trustor and Assurance Trustee shall execute and record a Substitute Agreement to Construct Subdivision Improvements Third Party Trust or similar agreement in a form approved by the City of Tucson, Trustor and Beneficiary (the "Substitute Assurance Agreement"). Trustor shall use commercially reasonable efforts to cause Assurance Trustee to execute such documents and instruments as Beneficiary shall request to evidence and acknowledge Beneficiary's lien and security interest in the Property, including, without limitation, Trustor's beneficial interest under the Trust Agreement. Trustor shall not authorize or instruct Assurance Trustee to, and Assurance Trustee shall not, sell, transfer, convey, assign or otherwise dispose of, or further encumber, or deed out to Trustor, all or any part of the Property subject to this Deed of Trust, or any interest therein, voluntarily or involuntarily, by operation of law or otherwise, or amend, modify or supplement, or restate, replace or terminate the Trust Agreement or Substitute Assurance Agreement, in each case without the prior written consent of Beneficiary.

11. Condemnation. Any award of damages in connection with any condemnation or taking of or for injury to any of the Property by reason of public use or for damages for private trespass or injury thereto shall be paid to Beneficiary as a prepayment under the Note until all Obligations Secured have been fully satisfied.

12. Default. Trustor shall be in default hereunder to the extent permitted by law, if: (a) Trustor fails to perform or pay on time any of the Obligations Secured and such failure is not cured within the notice and cure period, if any, provided for in the Note; (b) Trustor breaches any other

covenant or provision hereof (other than the payment of money) and such failure continues for 30 days after Trustor's receipt of written notice from Beneficiary.

13. Remedies. Upon any default by Trustor, Beneficiary may declare all sums secured hereby to be immediately due and payable in full, and may accelerate the Obligations Secured, and Beneficiary shall have the right to cause Trustee to sell the Property or any part thereof as provided by applicable law. All provisions of the law of the state where the Land is located relating to deeds of trust are incorporated by reference herein. 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. In any such judicial foreclosure, Beneficiary shall recover its reasonable attorneys' fees together with all costs and expenses, including without limitation, all court costs, experts' fees and cost of evidence of title. In the event of any default by Trustor under the Note which this Deed of Trust secures or under this Deed of Trust, except for the enforcement costs under Section 13 of the Note, Beneficiary shall look solely to Trustor's interest in the Property for satisfaction of the Trustor's obligations under the Note or under this Deed of Trust. Except for the enforcement costs under Section 13 of the Note, in the event of foreclosure or non-judicial sale of the Property pursuant to this Deed of Trust, Beneficiary shall not pursue any action for any deficiency against Trustor. Except for the enforcement costs under Section 13 of the Note, Beneficiary specifically releases Trustor, its officers, employees, elected officials and agents from and against any personal liability under the Note which the Deed of Trust secures and under this Deed of Trust.

14. Actions by Trustee. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary, without affecting the personal liability of any person for payment of the Obligations Secured hereby, Trustee may consent to the making of any map or plat of the Property, join in granting any easement thereon or in any extension agreement or agreement subordinating the lien or charge hereof.

15. Waiver of Remedies. Time is of the essence hereof. Acceptance of payment of money after its due date shall not constitute any waiver under this Deed of Trust or Beneficiary's right to require prompt payment of all other sums when due. No extension of time for payment or renewal of the Obligations Secured or the release from any personal liability of any person directly or contingently liable for any indebtedness secured hereby shall affect the lien or priority of this Deed of Trust. The taking by Beneficiary of any other collateral for the Obligations Secured hereby shall in no way affect or impair the lien or priority of this Deed of Trust and Beneficiary may resort for the payment of the Obligations Secured to its several securities in such order and manner as Beneficiary may determine. Any forbearance by Beneficiary in exercising any remedy or right hereunder shall not be a waiver of or preclude the subsequent exercise of any such remedy or right. The Trustor shall pay all costs of recordation and the partial release fees of Trustee, if any, provided that when the Note is paid in full, there shall be no release fee.

16. Notice. Except for any notice required under applicable law to be given in another manner, any notice to Trustor or Beneficiary provided for in this Deed of Trust shall be given in the manner, and shall be deemed received at the time, provided in the Agreement. Unless a Request for Notice is recorded as provided by law, notice of any Trustee's sale shall be sent solely to Trustor's address set forth therein.

17. Parties Bound. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, administrators, executors, successors and assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter and conversely and the singular number includes the plural and conversely. The term "Trustor" shall mean all persons named as Trustor herein, whether one or more, and Trustor's obligations shall be joint and several. "Trustee" shall include all successor trustees. Any Trustor that has signed this Deed of Trust as a surety or accommodation party or that has subjected its property to this Deed of Trust to secure the debt of another expressly waives the benefits of A.R.S. §§12-1641, 12-1642 and 44-142, § 33-814 and 16 Ariz. R. Civ. P. 17(f) or such similar provisions as may be enacted or adopted hereafter.

18. Trustee. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may, but is not obligated to, notify any party hereto of any pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee. Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and Beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Deed of Trust or the Property, to hold any money and documents and to withhold action or performance until an action shall be brought in a court of competent jurisdiction to determine the rights asserted or the propriety of the demand, notice or action requested and Trustee shall be without liability or responsibility for awaiting such court action. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all its predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and, having so resigned, shall be relieved of all further liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Trustee shall not be liable for any action taken in its discretion and in good faith or upon advice of counsel or upon any information supplied or direction given by Beneficiary.

19. Governing Law: Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Land is located. The foregoing sentence shall not limit the applicability of federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust that can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

20. Integration. This instrument constitutes the entire understanding of parties, each of whom has been, or has had the opportunity to be, represented by counsel of each party's choosing, and have been bargained for and are negotiated agreements that set forth the entire agreement with respect to the terms thereof, and there are no oral or written statements, representations, agreements or understandings which modify, amend or vary, or purport to modify, amend or vary any of the terms of such documents.

21. Security Intended. Notwithstanding any provision hereof to the contrary, the parties intend that this document constitute security for the payment and performance of the Obligations

Secured as provided elsewhere herein, and shall be a "deed of trust" as defined in A.R.S. §33-801. If despite that intention a court of competent jurisdiction shall determine that this document does not qualify as a "trust deed" or "deed of trust" within the meaning and purview of Chapter 6.1, Title 33, Arizona Revised Statutes, then, *ab initio*, this instrument shall be deemed a realty mortgage under A.R.S. §33-702, and shall be enforceable as such, the Trustor shall be deemed a "mortgagor," the Beneficiary shall be deemed a "mortgagee," the Trustee shall have no capacity but shall be disregarded and all references to the "Trustee" herein shall be deemed to refer to the "mortgagee" to the extent not inconsistent with interpreting this instrument as though it were a realty mortgage. As a realty mortgage, Trustor as mortgagor shall be deemed to have conveyed the Property *ab initio* to the Beneficiary as mortgagee, such conveyance as a security to be void upon condition that Trustor pay and perform all its Obligations Secured hereby.

22. Release of Deed of Trust. At such time as all of the Obligations Secured have been paid or otherwise satisfied in full, Beneficiary shall irrevocably and unconditionally release and reconvey the Property then held hereunder without any covenant or warranty, express or implied. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Beneficiary has no obligation to grant any partial release or partial reconveyance of the Property from the lien of this Deed of Trust.

[Signatures on following page]

IN WITNESS WHEREOF, this Deed of Trust is executed as of the day and year first above written.

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

By: _____
Name: Sharon Bronson
Title: Chair, Board of Supervisors

ATTEST:

Robin Brigode, Clerk of the Board

APPROVED AS TO FORM:

Tobin Rosen, Civil Deputy County Attorney

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged me, the undersigned Notary Public, this ___ day of _____, 2014, by _____, the _____ of PIMA COUNTY, ARIZONA, a political subdivision of the State of Arizona, on behalf thereof.

Notary Public

(Seal)

EXHIBIT A
Legal Description

**Exhibit H
Amortization Schedule**

**Loan Amortization
Schedule**

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Loan Information		Summary	
Loan Amount	7,000,000.00	Rate (per period)	6.000%
Annual Interest Rate	6.00%	Number of Payments	5
Term of Loan in Years	5	Total Payments	8,308,874.00
First Payment Date		Total Interest	1,308,874.00
Payment Frequency	Annual	Est. Interest Savings	0.02
Compound Period	Annual		
Payment Type	End of Period		
Annual Payment	1,661,774.80		

Rounding On

Amortization Schedule

No	Due Date	Payment	Additional Payment	Interest	Principal	Balance
						7,000,000.00
1		1,661,774.80		420,000.00	1,241,774.80	5,758,225.20
2		1,661,774.80		345,493.51	1,316,281.29	4,441,943.91
3		1,661,774.80		266,516.83	1,395,258.17	3,046,685.74
4		1,661,774.80		182,801.14	1,478,973.66	1,567,712.08
5		1,661,774.80		94,062.72	1,567,712.08	0.00

Exhibit I
Form 8038-G

Form **8038-G**
(Rev. September 2011)

Information Return for Tax-Exempt Governmental Obligations

Under Internal Revenue Code section 149(e)

See separate instructions.

OMB No. 1545-0720

Department of the Treasury
Internal Revenue Service

Caution: If the issue price is under \$100,000, use Form 8038-GC.

Part I Reporting Authority		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name		2 Issuer's employer identification number (EIN)	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	5 Report number (For IRS Use Only)	3
6 City, town, or post office, state, and ZIP code		7 Date of issue	
8 Name of issue		9 CUSIP number	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a	

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.			
11 Education		11	
12 Health and hospital		12	
13 Transportation		13	
14 Public safety		14	
15 Environment (including sewage bonds)		15	
16 Housing		16	
17 Utilities		17	
18 Other. Describe: ▶		18	
19 If obligations are TANS or RANs, check only box 19a	<input type="checkbox"/>		
If obligations are BANs, check only box 19b	<input type="checkbox"/>		
20 If obligations are in the form of a lease or installment sale, check box	<input type="checkbox"/>		

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.				
(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	\$	\$	years	%

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)			
22 Proceeds used for accrued interest		22	
23 Issue price of entire issue (enter amount from line 21, column (b))		23	
24 Proceeds used for bond issuance costs (including underwriters' discount)	24		
25 Proceeds used for credit enhancement	25		
26 Proceeds allocated to reasonably required reserve or replacement fund	26		
27 Proceeds used to currently refund prior issues	27		
28 Proceeds used to advance refund prior issues	28		
29 Total (add lines 24 through 28)		29	
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)		30	

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.			
31 Enter the remaining weighted average maturity of the bonds to be currently refunded	▶		years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	▶		years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	▶		
34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	▶		

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 637735 Form 8038-G (Rev. 9-2011)

Part VI: Miscellaneous

<p>35. Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)</p>	35			
<p>36a. Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)</p>	36a			
<p>b. Enter the final maturity date of the GIC ▶ _____</p>				
<p>c. Enter the name of the GIC provider ▶ _____</p>				
<p>37. Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units</p>	37			
<p>38a. If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:</p>				
<p>b. Enter the date of the master pool obligation ▶ _____</p>				
<p>c. Enter the EIN of the issuer of the master pool obligation ▶ _____</p>				
<p>d. Enter the name of the issuer of the master pool obligation ▶ _____</p>				
<p>39. If the issuer has designated the issue under section 265(b)(3)(B)(i)(II) (small issuer exception), check box</p>	▼			<input type="checkbox"/>
<p>40. If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box</p>	▼			<input type="checkbox"/>
<p>41a. If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:</p>				
<p>b. Name of hedge provider ▶ _____</p>				
<p>c. Type of hedge ▶ _____</p>				
<p>d. Term of hedge ▶ _____</p>				
<p>42. If the issuer has superintegrated the hedge, check box</p>	▼			<input type="checkbox"/>
<p>43. If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box</p>	▼			<input type="checkbox"/>
<p>44. If the issuer has established written procedures to monitor the requirements of section 148, check box</p>	▼			<input type="checkbox"/>
<p>45a. If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement</p>				
<p>b. Enter the date the official intent was adopted ▶ _____</p>				

Signature and Consent	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	Signature of issuer's authorized representative	Date	Type or print name and title	
Paid Preparer Use Only	Print/type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed PTIN
	Firm's name ▶	Firm's EIN ▶		
	Firm's address ▶	Phone no.		

Instructions for Form 8038-G

(Rev. September 2012)



Department of the Treasury
Internal Revenue Service

(Use with the September 2011 revision of Form 8038-G.)

Information Return for Tax-Exempt Governmental Obligations

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Purpose of Form

Form 8038-G is used by issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(a) and to monitor the requirements of sections 141 through 150.

Who Must File

IF the issue price (line 21, column (b)) is...	THEN, for tax-exempt governmental obligations issued after December 31, 1988, issuers must file...
\$100,000 or more	A separate Form 8038-G for each issue
Less than \$100,000	Form 8038-GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales



For all build America bonds and recovery zone economic development bonds use Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds. For tax credit bonds and specified tax credit bonds use Form 8038-TC, Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.

When To File

File Form 8038-G on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond is issued. Form 8038-G may not be filed before the issue date and must be completed based on the facts as of the issue date.

Late filing. An issuer may be granted an extension of time to file Form 8038-G under Section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file timely is not due to willful neglect. Type or print at the top of the form "Request for Relief" under section 3 of Rev. Proc. 2002-48 and attach a letter explaining why Form 8038-G was not submitted to the IRS on time. Also indicate whether the bond issue in question is under examination by the IRS. Do not

submit copies of the trust indenture or other bond documents. See *Where To File* next.

Where To File

File Form 8038-G, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

Private delivery services. You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL); DHL Same Day Service.
- Federal Express (FedEx); FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

For build America bonds (Direct Pay), build America bonds (Tax Credit), and recovery zone economic development bonds, complete Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.

For qualified forestry conservation bonds; new clean renewable energy bonds; qualified energy conservation bonds; qualified zone academy bonds; qualified school construction bonds; clean renewable energy bonds, and all other qualified tax credit bonds (except build America bonds), file Form 8038-TC.

Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.

Rounding to Whole Dollars

You may show amounts on this return as whole dollars. To do so, drop amounts less than 50 cents and increase amounts from 50 cents through 99 cents to the next higher dollar.

Questions on Filing Form 8038-G

For specific questions on how to file Form 8038-G send an email to the IRS at TaxExemptBondQuestions@irs.gov and put "Form 8038-G Question" in the subject line. In the email include a description of your question, a return email address, the name of a contact person, and a telephone number.

Definitions

Tax-exempt obligation. This is any obligation, including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

Tax-exempt governmental obligation. A tax-exempt obligation that is not a private activity bond (see next) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

Private activity bond. This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use; and
- More than 10% of the payment of principal or interest of the issue is either (a) secured by an interest in property to be used for a private business use (or payments for such property) or (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used directly or indirectly to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

Issue price. The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus,

when issued for cash, the issue price is the first price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

Issue. Generally, obligations are treated as part of the same issue if they are issued by the same issuer, on the same date, and in a single transaction, or a series of related transactions. However, obligations issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meet the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within a year of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

Arbitrage rebate. Generally, interest on a state or local bond is not tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

Construction issue. This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds are to be used for construction expenditures with respect to property to be owned by a governmental unit or a section 501(c)(3) organization, and

2. All the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a section 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make

an irrevocable election to pay a penalty. The penalty is equal to 1% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the instructions for Form 8038-T.

Pooled financing issue. This is an issue of tax-exempt bonds, the proceeds of which are to be used to finance purpose investments representing conduit loans to two or more conduit borrowers, unless those conduit loans are to be used to finance a single capital project.

Specific Instructions

Part I—Reporting Authority

Amended return. An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the **Amended Return** box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new or corrected information. Attach an explanation of the reason for the amended return and write across the top, "Amended Return Explanation." Failure to attach an explanation may result in a delay in processing the form.

Line 1. The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. For a lease or installment sale, the issuer is the lessor or the purchaser.

Line 2. An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. You can get this form on the IRS website at irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

Line 3a. If the issuer wishes to authorize a person other than an officer or other employee of the issuer (including a legal representative or paid preparer) to communicate with the IRS and whom the IRS may contact about this return (including in writing or by telephone), enter the name of such person here. The person listed in line 3a must be an individual. Do not enter the name and title of an officer or other employee of the issuer here (use line 10a for that purpose).

Note. By authorizing a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS may contact about this return, the issuer authorizes the IRS to

communicate directly with the individual entered on line 3a and consents to disclose the issuer's return information to that individual, as necessary, to process this return.

Lines 4 and 6. If you listed an individual on line 3a to communicate with the IRS and whom the IRS may contact about this return, enter the number and street (or P.O. box if mail is not delivered to street address), city, town, or post office, state, and ZIP code of that person. Otherwise, enter the issuer's number and street (or P.O. box if mail is not delivered to street address), city, town, or post office, state, and ZIP code.

Note. The address entered on lines 4 and 6 is the address the IRS will use for all written communications regarding the processing of this return, including any notices.

Line 5. This line is for IRS use only. Do not make any entries in this box.

Line 7. The date of issue is generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds. For a lease or installment sale, enter the date interest starts to accrue in an MM/DD/YYYY format.

Line 8. If there is no name of the issue, please provide other identification of the issue.

Line 9. Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of the bond with the latest maturity. If the issue does not have a CUSIP number, write "None."

Line 10a. Enter the name and title of the officer or other employee of the issuer whom the IRS may call for more information. If the issuer wishes to designate a person other than an officer or other employee of the issuer (including a legal representative or paid preparer) whom the IRS may call for more information about the return, enter the name, title, and telephone number of such person on lines 3a and 3b.



Complete lines 10a and 10b even if you complete lines 3a and 3b.

Part II—Type of Issue



Elections referred to in Part II are made on the original bond documents, not on this form.

Identify the type of obligations issued by entering the corresponding issue price (see *Issue price* under *Definitions* earlier). Attach a schedule listing names and EINs of organizations that are to use proceeds of these obligations, if different from those

of the issuer, include a brief summary of the use and indicate whether or not such user is a governmental or nongovernmental entity.

Line 18. Enter a description of the issue in the space provided.

Line 19. If the obligations are short-term tax anticipation notes or warrants (TANs) or short-term revenue anticipation notes or warrants (RANs), check box 19a. If the obligations are short-term bond anticipation notes (BANs), issued with the expectation that they will be refunded with the proceeds of long-term bonds at some future date, check box 19b. Do not check both boxes.

Line 20. Check this box if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. Do not check this box if the proceeds of the obligation are received in the form of cash, even if the term "lease" is used in the title of the issue.

Part III—Description of Obligations

Line 21. For column (a), the final maturity date is the last date the issuer must redeem the entire issue.

For column (b), see *Issue Price* under *Definitions* earlier.

For column (c), the stated redemption price at maturity of the entire issue is the sum of the stated redemption prices at maturity of each bond issued as part of the issue. For a lease or installment sale, write "N/A" in column (c).

For column (d), the weighted average maturity is the sum of the products of the issue price of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory redemptions), divided by the issue price of the entire issue (from line 21, column (b)). For a lease or installment sale, enter instead the total number of years the lease or installment sale will be outstanding.

For column (e), the yield, as defined in section 148(h), is the discount rate that, when used to compute the present value of all payments of principal and interest to be paid on the obligation, produces an amount equal to the purchase price, including accrued interest. See Regulations section 1.148-4 for specific rules to compute the yield on an issue. If the issue is a variable rate issue, write "VR" as the yield of the issue. For other

than variable rate issues, carry the yield out to four decimal places (for example, 5.3125%), if the issue is a lease or installment sale, enter the effective rate of interest being paid.

Part IV—Uses of Proceeds of Bond Issue

For a lease or installment sale, write "N/A" in the space to the right of the title for Part IV.

Line 22. Enter the amount of proceeds that will be used to pay interest from the date the bonds are dated to the date of issue.

Line 24. Enter the amount of the proceeds that will be used to pay bond insurance costs, including fees for trustees and bond counsel. If no bond proceeds will be used to pay bond insurance costs, enter zero. Do not leave this line blank.

Line 25. Enter the amount of the proceeds that will be used to pay fees for credit enhancement that are taken into account in determining the yield on the issue for purposes of section 148(h) (for example, bond insurance premiums and certain fees for letters of credit).

Line 26. Enter the amount of proceeds that will be allocated to such a fund.

Line 27. Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds within 90 days of the date of issue.

Line 28. Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds after 90 days of the date of issue, including proceeds that will be used to fund an escrow account for this purpose.

Part V—Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of tax-exempt bonds. For a lease or installment sale, write "N/A" in the space to the right of the title for Part V.

Lines 31 and 32. The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined in the same manner as on line 21, column (d).

Line 34. If more than a single issue of bonds will be refunded, enter the date of issue of each issue. Enter the date in an MM/DD/YYYY format.

Part VI—Miscellaneous

Line 35. An allocation of volume cap is required if the nonqualified amount for the issue is more than \$15 million but is not

more than the amount that would cause the issue to be private activity bonds.

Line 36. If any portion of the gross proceeds of the issue is or will be invested in a guaranteed investment contract (GIC), as defined in Regulations section 1.148-1(b), enter the amount of the gross proceeds so invested, as well as the final maturity date of the GIC and the name of the provider of such contract.

Line 37. If the issue is a pooled financing issue (as defined under *Pooled financing issue* in *Definitions*), enter the amount of the proceeds used to make loans to other governmental units, the interest on which is tax-exempt.

Line 38. If the issue is a loan of proceeds from a pooled financing issue (as defined under *Pooled financing issue* in *Definitions*), check the box and where asked for the date of issue, EIN, and name of the issuer of the master pool obligation, enter the date of issue, EIN, and name of the issuer of the pooled financing issue.

Line 40. Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8088-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of arbitrage rebate with this form. See Rev. Proc. 92-22, 1992-1 C.B. 736 for rules regarding the "election document."

Line 41a. Check this box if the issuer has identified a hedge on its books and records according to Regulations sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5) that permit an issuer of tax-exempt bonds to identify a hedge for it to be included in yield calculations for computing arbitrage.

Line 42. In determining if the issuer has super-integrated a hedge, apply the rules of Regulations section 1.148-4(h)(4). If the hedge is super-integrated, check the box.

Line 43. If the issuer takes a "deliberate action" after the issue date that causes the conditions of the private business tests or the private loan financing test to be met, then such issue is also an issue of private activity bonds. Regulations section 1.141-2(d)(3) defines a deliberate action as any action taken by the issuer that is within its control regardless of whether there is intent to violate such tests. Regulations section 1.141-12 explains the conditions to taking remedial action that prevent an action that causes an issue to meet the private business tests or private loan financing test from being treated as a deliberate action. Check the box if the issuer has established written procedures to ensure timely remedial action for all nonqualified bonds according to

Regulations section 1.141-12 or other remedial actions authorized by the Commissioner under Regulations section 1.141-12(h).

Line 44. Check the box if the issuer has established written procedures to monitor compliance with the arbitrage, yield, restriction, and rebata requirements of section 148.

Line 45a. Check the box if some part of the proceeds was used to reimburse expenditures. Figure and then enter the amount of proceeds that are used to reimburse the issuer for amounts paid for a qualified purpose prior to the issuance of the bonds. See Regulations section 1.150-2.

Line 45b. An issuer must adopt an official intent to reimburse itself for pressuance expenditures within 60 days after payment of the original expenditure unless excepted by Regulations section 1.150-2(f). Enter the date the official intent was adopted. See Regulations section 1.150-2(e) for more information about official intent.

Signature and Consent

An authorized representative of the issuer must sign Form 8038-G and any applicable certification. Also print the name and title of the person signing Form 8038-G. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that have been designated in Form 8038-G.

Note. If the issuer in Part 1, lines 3a and 3b authorizes the IRS to communicate (including in writing and by telephone) with a person other than an officer or other employee of the issuer, by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

Paid Preparer

If an authorized officer of the issuer filed in this return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer Use Only* area of the return.

The paid preparer must:

- * Sign the return in the space provided for the preparer's signature (a facsimile signature is acceptable).
- * Enter the preparer information, and
- * Give a copy of the return to the issuer.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form varies depending on individual circumstances. The estimated average time is:

Learning about the law or the form	2 hr., 41 min.
Preparing, copying, assembling, and sending the form to the IRS	3 hr., 3 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE-W-CAR-MP-TIM:5, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this office. Instead, see *Where To File*.

**Exhibit J
Note Register**

NOTE REGISTER

Note Title: Non-Recourse Promissory Note
Note Date: August __, 2014
Principal Amount: \$7,000,000.00
Lender/Holder: Stardust-REIF No. 3, L.L.C., an Arizona limited liability company
Borrower/Maker: Pima County, Arizona, a political subdivision of the State of Arizona

Payment Date	Principal Payment	Interest Payment	Total Payment
	\$	\$	\$

The Note that is the subject of this Note Register is registered as to principal and interest.

Transfer of the Note that is the subject of this Note Register may be assigned or transferred by the Lender only by surrender of the Note and either the reissuance by Pima County of the Note to the new holder or the issuance by Pima County of a new promissory note (payable on the same terms and conditions as the surrendered Note to the new holder). The Note that is the subject of this Note Register can be transferred or assigned only as a whole.

A copy of the Note that is the subject of this Note Register is attached to this Note Register.

[Attach copy of Note]

NON-RECOURSE PROMISSORY NOTE

\$7,000,000.00

_____, 2014
Tucson, Arizona

FOR VALUE RECEIVED, PIMA COUNTY, ARIZONA, a political subdivision of the State of Arizona ("Borrower"), promises to pay to STARDUST-REIF NO. 3, L.L.C., an Arizona limited liability company, the registered owner of this Note or any registered assign (collectively, "Lender"), at 6730 North Scottsdale Road, Suite 230, Scottsdale, Arizona 85253, or by wire transfer to Lender's bank account or at such other place as Lender may from time to time designate in writing, in lawful money of the United States of America, the principal sum of SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00), together with interest thereon and such other amounts as may be payable by Borrower to Lender pursuant to the terms and conditions of this Note, in accordance with the following terms and conditions:

1. **Interest.** Principal of this Note shall bear interest, from the date of this Note until repaid to Lender, at the per annum rate of six percent (6.0%) (the "Interest Rate"), calculated on the basis of a 360-day year consisting of twelve 30-day months, and for prepayments only the actual number of days elapsed during any partial month for which interest is being charged; *provided*, that if any payment due hereunder is not paid on the due date the principal of this Note shall bear interest at the per annum rate of ten percent (10.0%) (the "Default Rate") from the due date of such payment until the default is cured.

2. **Payments of Principal and Interest.** Subject to the provisions of Section 6 hereof regarding prepayment of principal of this Note, and the provisions of Section 10 hereof regarding the rights and remedies of Lender upon the occurrence of an Event of Default, Borrower will pay Lender level annual principal and interest payments in the amount of ONE MILLION SIX HUNDRED SIXTY ONE THOUSAND SEVEN HUNDRED SEVENTY-FOUR AND 80/100 DOLLARS (\$1,661,774.80) on _____ 1 of each year beginning _____, 2015.

3. **Final Maturity.** Subject to the provisions of Section 10 hereof regarding the rights and remedies of Lender upon the occurrence of an Event of Default, the entire unpaid principal balance of this Note, together with all accrued and unpaid interest and all other amounts then due Lender under this Note, shall be due and payable in full on _____, 2019 (the "Maturity Date").

- 1 Month and day of Closing to be inserted.
- 2 Month and day of Closing to be inserted.
- 3 Month and day of Closing to be inserted.

4. **Application of Payments.** All payments made under this Note or the indebtedness evidenced hereby shall be applied by Lender in the following order of priority: (a) first, to any late charges, costs, fees or other amounts then due and payable to Lender under this Note or the Deed of Trust (as defined herein) (other than the principal of this Note and accrued and unpaid interest thereon); (b) second, to accrued and unpaid interest on the principal balance of the Note; and (c) last, to the payment of principal of this Note.

5. **Late Charge.** It is recognized by Borrower that, should the scheduled installment payments not be paid when the same becomes due and payable, Lender will incur extra expenses for the handling of delinquent installment payments and the loss of the use of the money due, the exact amount of such extra expense being impossible to ascertain, but that a charge equal to One Hundred Dollars (\$100.00) for each day of such delinquent installment payment from the due date until paid would be a fair approximation of the expense so incurred by Lender for the handling of delinquent installment payments and the loss of the use of the money due. Therefore, if any scheduled installment payment is not paid on or before ten (10) days after the due date thereof, without further notice, and without prejudice to the right of Lender to collect any other amounts provided to be paid herein or to declare a default hereunder, and as Lender's sole monetary recovery to cover such expense incurred in the handling of delinquent installment payments and the loss of the use of the money due, the delinquent installment payment will be subject to a late charge equal to One Hundred Dollars (\$100.00) for each day of such delinquent installment payment from the due date until paid. The late charge shall, at Lender's option, either (i) upon demand by Lender, be paid by Borrower to Lender in addition to such delinquent installment payment, or (ii) be deducted from the amount of such delinquent installment payment when made, in which event such amount shall be added to the indebtedness evidenced by this Note and shall be paid by Borrower to Lender upon demand.

6. **Prepayments.** Borrower may voluntarily prepay, without any prepayment premium or penalty, all or any portion of the principal balance of this Note, together with accrued and unpaid interest on the portion of the principal balance of this Note that is being repaid. All such prepayments shall be applied in the manner provided in Section 4 above and the amount applied to the payment of principal of this Note shall be applied in the inverse order of maturity.

7. **Security; Note is Non-Recourse.** This Note is secured by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust") of even date herewith from Borrower in favor of Lender encumbering certain real property located in Pima County, Arizona, as more particularly described therein (the "Property"). In the event of any default by Borrower under this Note, except as otherwise provided in Section 13 below, Lender shall look solely to Borrower's interest in the Property for satisfaction of the Borrower's obligations under this Note. Except as otherwise provided in Section 13 below, in the event of foreclosure or non-judicial sale of the Property pursuant to the Deed of Trust, Lender shall not pursue any action for any deficiency against Borrower. Except as otherwise provided in Section 13 below, Lender specifically releases Borrower, its officers, employees, elected officials and agents from and against any personal liability under this Note.

8. **Contracted For Rate of Interest.** The contracted for rate of interest of the loan contemplated hereby, without limitation, shall consist of the following:

(a) The Interest Rate, calculated and applied to the principal balance of this Note in accordance with the provisions of this Note and the Deed of Trust;

(b) The Default Rate calculated and applied to the principal balance in accordance with the provisions of this Note and the Deed of Trust; and

(c) All Additional Sums (as hereinafter defined), if any.

Borrower agrees to pay an effective contracted for rate of interest which is the sum of the Interest Rate referred to in Section 8(a) above, plus any additional rate of interest resulting from the application of the Default Rate referred to in Section 8(b) above, and the Additional Sums, if any, referred to in Section 8(c) above.

9. **Additional Sums.** All fees, charges, goods, things in action or any other sums or things of value (other than the interest resulting from the Interest Rate and the Default Rate), paid or payable by Borrower (collectively, the "Additional Sums"), whether pursuant to this Note or any other document or instrument in any way pertaining to this lending transaction, or otherwise with respect to this lending transaction, that, under the laws of the State of Arizona, may be deemed to be interest with respect to this lending transaction, for the purpose of any laws of the State of Arizona that may limit the maximum amount of interest to be charged with respect to this lending transaction, shall be payable by Borrower as, and shall be deemed to be, additional interest, and for such purposes only, the agreed upon and "contracted for rate of interest" of this lending transaction shall be deemed to be increased by the rate of interest resulting from the Additional Sums. Borrower understands and believes that this lending transaction complies with the usury laws of the State of Arizona; however, if any interest or other charges in connection with this lending transaction are ever determined to exceed the maximum amount permitted by law, then Borrower agrees that (a) the amount of interest or charges payable under this lending transaction shall be reduced to the maximum amount permitted by law and (b) any excess amount previously collected from Borrower in connection with this lending transaction that exceeded the maximum amount permitted by law, shall be credited against the principal balance of this Note then outstanding. If the outstanding principal balance hereunder has been paid in full, the excess amount paid shall be refunded to Borrower and Borrower agrees to accept such refund.

10. **Event of Default; Acceleration.** Upon the occurrence of any of the following acts, omissions or events ("Event of Default"), the principal of this Note, together with accrued and unpaid interest thereon, and all other amounts outstanding under this Note and the Deed of Trust shall, at the option of Lender, be immediately due and payable:

(a) The failure of Borrower to make any interest or principal installment payment due under this Note (including the interest and principal installment payment due on the Maturity Date), whether at maturity, by acceleration, or otherwise, in accordance with the terms of this Note; or

(b) The failure of Borrower to pay any late charges, costs, fees or other amounts then due and payable to Lender under this Note or the Deed of Trust (other than the installment

payments referenced in subsection (a) above) in accordance with the terms of this Note or the Deed of Trust, on or before ten (10) days after Borrower's receipt of written notice of such non-payment; or

(c) The failure of Borrower to punctually and properly perform any other covenant, condition or agreement contained in this Note or the Deed of Trust; or

(d) The Substitute Agreement to Construct Subdivision Improvements Third Party Trust among Borrower, the City of Tucson (the "City") and Title Security Agency of Arizona, LLC ("Assurance Trustee") with respect to the required subdivision improvements to the Property is terminated or revoked, and Borrower has not tendered substitute assurances acceptable to the City for the completion of the required subdivision improvements to the Property; or

(e) The Trust Agreement between Borrower and Assurance Trustee with respect to the Property is terminated or revoked for any reason; or

(f) The sale, transfer, conveyance, assignment or other disposal of, or further encumbrance of, all or any part of the Property in violation of Paragraph 10 of the Deed of Trust; or

(g) Any representation or warranty of Borrower set forth in this Note or the Deed of Trust is false or misleading in any material respect when made; or

(h) Any material default under the Purchase and Sale Agreement dated June __, 2014 between Lender and Borrower (the "Agreement") or any agreement or instrument executed by Borrower in connection with the Agreement, and the failure to cure such material default on or before thirty (30) days after Borrower's receipt of written notice of such failure from Lender; or

(i) A writ of execution or attachment or any similar process is issued or levied against all or any part of or interest in the Property, and such execution, attachment or similar process is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy.

11. **Time of Essence.** Time is of the essence of this Note and each provision hereof.

12. **Waiver by Lender.** No delay on the part of Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege hereunder shall preclude other or further exercise thereof, or be deemed to establish a custom or course of dealing or performance between the parties hereto, or preclude the exercise of any other right, power or privilege.

13. **Attorneys' Fees.** If there is any litigation, arbitration or other proceedings relating to the enforcement of this Note or the Deed of Trust, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees, court costs, expert witness fees and other litigation related expenses arising out of or related to such enforcement action.

14. **Waivers of Borrower.** Borrower (for itself and its successors and assigns), and any endorsers and guarantors hereof, by virtue of such endorsement or guaranty, respectively, hereby

waive, except as is set forth herein, presentment for payment, protest and demand, notice of protest, demand and of dishonor and nonpayment of this Note, and expressly agree that this Note, or any payment hereunder, may be extended from time to time before, at, or after maturity of the obligations evidenced hereby, without in any way affecting the liability of Borrower hereunder, or the validity of any mortgage, pledge, lien or security interest given to secure payment hereof.

15. **Governing Law; Waiver of Jury Trial.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to its conflict of laws rules. Lender and Borrower acknowledge and agree that any controversy which may arise under this Note or the Deed of Trust or with respect to the transactions contemplated hereby or thereby would be based upon difficult and complex issues and, therefore, the parties agree that any lawsuit arising out of any such controversy shall be tried in a court of competent jurisdiction by a judge sitting without a jury.

16. **Tax-Exempt Interest.** Borrower represents that this Note is not an obligation of a type offered by Borrower to the public. Borrower will nevertheless maintain a register in the form attached as Exhibit J to the Acquisition Agreement, without representation or warranty that the register meets the requirements of Section 149 of the Internal Revenue Code of 1986, as amended (the "Code"), or that Section 149 of the Code is or is not applicable to this Note. This Note may be assigned or transferred by Lender only by surrender of this Note and either the reissuance by Borrower of this Note to the new holder or the issuance by Borrower of a new promissory note (payable on the same terms and conditions as the surrendered Note to the new holder). This Note can be transferred or assigned only as a whole.

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the date first above written.

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

By: _____

Name: Sharon Bronson

Title: Chair, Board of Supervisors

ATTEST:

Robin Brigode, Clerk of the Board

APPROVED AS TO FORM:

Tobin Rosen, Civil Deputy County Attorney

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the attached Note and do(es) hereby irrevocably constitute and appoint _____
_____, attorney, to transfer the same on the registration books of the
Borrower, with full power of substitution in the premises.

Date: _____

_____, a _____

By: _____

Name: _____

Title: _____

WHEN RECORDED MAIL TO:

Jay S. Kramer
Fennemore Craig, P.C.
2394 East Camelback Road, Suite 600
Phoenix, AZ 85016-3429

DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

DATE: _____, 2014

TRUSTOR: PIMA COUNTY, ARIZONA

Attn: _____

Trustor's
Organizational I.D.: _____

BENEFICIARY: STARDUST-REIF NO. 3, L.L.C.
6730 North Scottsdale Road, Suite 230
Scottsdale, Arizona, 85253
Attn: Chris B. Heeter

TRUSTEE: FIRST AMERICAN TITLE INSURANCE COMPANY
2425 East Camelback, Suite 300
Phoenix, Arizona 85016

PROPERTY in Pima County, State of Arizona, described as:

See **Exhibit "A"** attached hereto and incorporated herein by reference.

This Deed of Trust is made among Trustor, Beneficiary and Trustee who agree as follows:

1. Grant and Conveyance. For value received, Trustor irrevocably grants, conveys and assigns to Trustee in Trust, with power of sale, certain real property located in Pima County, Arizona, and more particularly described in Exhibit A attached hereto (the "Land"), together with the following: (i) all buildings, structures and improvements located on the Land, including, without limitation, all irrigation ditches, gates, valves, pumps, tanks, and wells; (ii) all of Trustor's right, title and interest in and to all appurtenances, hereditaments, interests, privileges, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights, and air rights (including

any grandfathered groundwater or other groundwater or surface water rights) appurtenant to the Land, including, without limitation, all irrigation ditches, gates, valves, pumps, tanks, and wells, if any; (iii) all of Trustor's right, title and interest in and to all oil, gas, and mineral rights relating to the Land not previously reserved; (iv) all of Trustor's right, title and interest, on a non-exclusive basis, in and to all plans, specifications, plats, assessments, agreements, reports, studies, and surveys relating to the Land or improvements located thereon, and all warranties applicable thereto; (v) all of Trustor's right, title and interest in and to any other rights or privileges appurtenant to the Land or, on a non-exclusive basis, any other rights or privileges used in connection with the Land; and (vi) all of Trustor's right, title and interest as beneficiary in, to and under that certain Trust Agreement No. _____ dated _____, 2014 (the "Trust") in which Landmark Title Assurance Agency of Arizona, LLC ("Assurance Trustee) is the trustee and Trustor is the beneficiary, and any permitted amendments, modifications and supplements thereto, and restatements and replacements thereof (the "Trust Agreement" and together with the Land and items (i) through (v) above, the "Property"). All components of the Property are deemed encumbered hereby and are declared to be part of the real estate whether or not physically attached to the Land.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing, in such order of priority as Beneficiary may elect:

(a) Payment of the sum of SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00), which may include, without limitation, future advances of principal made after the date hereof, with interest thereon, extension and other fees, late charges and attorneys' fees, according to the terms of that Non-Recourse Promissory Note of even date herewith, made by Trustor payable to the order of Beneficiary, and all extensions, modifications, renewals or replacements thereof (the "Note"); and

(b) Payment, performance and observance by Trustor of each covenant, condition, provision and agreement contained herein and in the Acquisition Agreement dated _____, 2014 between Trustor and Beneficiary (the "Agreement"), and of all monies expended or advanced by Beneficiary pursuant to the terms hereof, or to preserve any right of Beneficiary hereunder, or to protect or preserve the Trust Property or any part thereof;

All of the indebtedness and obligations secured by this Deed of Trust are hereinafter collectively called the "Obligations Secured". All capitalized terms used herein without definition shall have the meanings attributed to such terms in the Note.

3. Payment of Obligations Secured. Trustor shall perform and pay when due and before delinquency: (a) all Obligations Secured hereby; (b) all liens, taxes, assessments, fines, impositions and charges of every type or nature affecting the Property; and (c) all costs, fees and expenses of this Trust including, without limitation, all fees of Trustee.

4. Maintenance of Property; No Construction. Trustor shall neither commit nor permit to occur any waste upon the Property. Trustor shall keep the Property free of rubbish and other unsightly or unhealthful conditions. Trustor shall neither use nor permit the use of the Property in violation of any applicable statute, ordinance or regulation, including, without limitation, any

Environmental Laws (as defined below). Trustor shall not seek to modify or amend the zoning or other protected development rights related to the Property, or subdivide, plat, dedicate for public use, or restrict or grant any easements relating to the Property. Trustor shall not commence or undertake any grading, development or construction activities on the Property. Trustor shall pay or cause to be paid before delinquent all taxes and assessments of every kind, nature and description levied or assessed on or against the Property, unless exempt from taxation, and, upon request by Beneficiary, shall deliver to Beneficiary, at least ten (10) days before they become delinquent, receipts showing payment of all such taxes and assessments and shall pay when due all dues and charges for water and water delivery, electricity, gas, sewers, waste removal, bills for repairs, and any and all other claims, encumbrances and expenses incident to the ownership of the Property.

5. Protection by Trustor. Trustor shall defend, at Trustor's expense, any action or proceeding purporting to affect Trustor's interest in the Property or the liens, rights or powers of Beneficiary or Trustee, or seeking to impose any liability on Beneficiary or Trustee because of any act or omission of Trustor. Trustor shall and does hereby agree to indemnify and hold Beneficiary and Trustee harmless from any such action or proceeding.

6. Protection by Beneficiary or Trustee; Reimbursement. Beneficiary or Trustee or both of them are authorized at their election to appear in and defend any action or proceeding purporting to affect the Property or the liens, rights or powers of Beneficiary or Trustee; to pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior hereto; and, in exercising any such powers, to pay reasonable expenses, employ counsel, and to pay counsel's reasonable fees and costs. Without obligation to do so, Beneficiary or Trustee may pay any amount or perform any obligation which is required of Trustor hereunder and which is not paid or performed by Trustor within 10 days after receipt of written notice by Trustor with respect to any payment obligation or within 30 days after receipt of written notice by Trustor with respect to any performance obligation (except in either case, in the event of an emergency Beneficiary shall not be required to provide any prior notice), or take any other action or incur any other expense to protect the Property and the security hereof. All amounts so paid or expenses so incurred by Trustee or Beneficiary shall bear interest at the Default Rate from the date incurred until repaid in full, and shall be secured by this Deed of Trust as a lien on the Property. Unless otherwise agreed, such amounts or expenses with interest shall be payable within 10 days after written notice to Trustor requesting such payment. Neither Beneficiary nor Trustee shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any lease, declaration or covenant.

7. Environmental Laws. Trustor agrees to indemnify, defend and hold Beneficiary harmless for, from and against and to reimburse Beneficiary with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses, including but not limited to Beneficiary's costs, of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Beneficiary at any time and from time to time by reason of or arising out of any violation of any "Environmental Law", as hereinafter defined, in effect and any and all matters arising out of any act, omission, event or circumstance first existing or first occurring after the date hereof for which any party may claim Beneficiary has liability (including without limitation the presence on the Land or release from the Land of hazardous substances or solid waste disposed of or otherwise released from the Land), regardless of whether the act, omission, event or circumstance

constituted a violation of any Environmental Law at the time of its existence or occurrence; provided, however, such indemnity shall not apply with respect to matters existing as of the date hereof, or caused by or arising out of the negligence or willful misconduct of Beneficiary. The terms "hazardous substance" and "release" shall have the meanings specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), and the terms "solid waste" and "disposed" shall have the meanings specified in the Resource Conservation and Recovery Act of 1976 ("RCRA"); provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and shall apply retroactively to matters existing prior to the date hereof, and provided further to the extent that state laws establish a meaning for "hazardous substance," "release," "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply and shall apply retroactively to matters existing prior to the date hereof. The provisions of this paragraph shall survive the release of this Deed of Trust or any foreclosure of this Deed of Trust and shall continue thereafter in full force and effect. As used herein, the term "Environmental Law" shall include CERCLA, RCRA, all state and local government law of like nature, as each may now exist or be hereinafter amended, supplemented or replaced and any other laws of the United States of America or state or local government now existing or hereafter enacted which pertain to hazardous or toxic substances on or from the Land, the environmental condition of the Land or the environmental contamination of or from the Land.

8. Assignment of Leases and Rents. As additional security for the Obligations Secured, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during continuance of this Trust, to collect and all rents, issues, profits or income arising from the Property (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 to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his 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, 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, shall not cure or waive any default or notice of Trustee's Sale hereunder or invalidate any act done pursuant to said notice.

9. Security Agreement. That in addition to creating a lien against the Property, this Deed of Trust constitutes a security agreement within the meaning of the Arizona Uniform Commercial Code (the "Code") and is intended to and does hereby create a lien on and security interest in favor of Beneficiary in all fixtures, equipment, property income and other personal property of Trustor, and all replacements and substitutions thereof, including, without limitation, all of Trustor's right, title and interest as beneficiary in, to and under the Trust and the Trust Agreement (the "Personal Property"), at any time situated on or used in connection with the maintenance and operation of the Property, or related to the ownership of the Property. Trustor shall not amend, modify, supplement, restate, replace or terminate the Trust Agreement or Substitute Assurance

Agreement (as defined below) without the prior written consent of Beneficiary. Trustor shall not authorize or instruct Assurance Trustee to take any actions and Assurance Trustee shall not comply with any instructions from Trustor, in each case without the prior written consent of Beneficiary. This Deed of Trust shall be self-operative with respect to such Personal Property, but Trustor shall execute and deliver on demand from Beneficiary one or more security agreements, financing statements and other instruments as Beneficiary may request in order to impose the lien hereof more specifically upon any such Personal Property, the terms and conditions thereof to be as required by Beneficiary, in Beneficiary's sole and absolute discretion. Trustor agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all Personal Property covered by the security interest granted hereby, are encumbered as one unit, and upon default by Trustor under the Note secured hereby, or under this Deed of Trust, or any security agreement given pursuant to this paragraph, in addition to the remedies available to a secured party under the Code, this Deed of Trust and such security interest, at Beneficiary's option, may be foreclosed or sold in the same proceeding, and all of the Property (both real property and personal property) may, at Beneficiary's option, be sold as such in one unit as a going business, subject to the provisions of Arizona Revised Statutes § 33-810(A). The filing of any financing statement relating to any Personal Property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.

10. Due on Sale. Except as otherwise provided in the following sentence, Trustor shall not sell, transfer, convey, assign or otherwise dispose of, or further encumber, all or any part of the Property subject to this Deed of Trust, or any interest therein, voluntarily or involuntarily, by operation of law or otherwise. Immediately after the recordation of this Deed of Trust, Trustor shall convey the Property to Assurance Trustee as the trustee under the Trust Agreement and Trustor and Assurance Trustee shall execute and record a Substitute Agreement to Construct Subdivision Improvements Third Party Trust or similar agreement in a form approved by the City of Tucson, Trustor and Beneficiary (the "Substitute Assurance Agreement"). Trustor shall use commercially reasonable efforts to cause Assurance Trustee to execute such documents and instruments as Beneficiary shall request to evidence and acknowledge Beneficiary's lien and security interest in the Property, including, without limitation, Trustor's beneficial interest under the Trust Agreement. Trustor shall not authorize or instruct Assurance Trustee to, and Assurance Trustee shall not, sell, transfer, convey, assign or otherwise dispose of, or further encumber, or deed out to Trustor, all or any part of the Property subject to this Deed of Trust, or any interest therein, voluntarily or involuntarily, by operation of law or otherwise, or amend, modify or supplement, or restate, replace or terminate the Trust Agreement or Substitute Assurance Agreement, in each case without the prior written consent of Beneficiary.

11. Condemnation. Any award of damages in connection with any condemnation or taking of or for injury to any of the Property by reason of public use or for damages for private trespass or injury thereto shall be paid to Beneficiary as a prepayment under the Note until all Obligations Secured have been fully satisfied.

12. Default. Trustor shall be in default hereunder to the extent permitted by law, if: (a) Trustor fails to perform or pay on time any of the Obligations Secured and such failure is not cured within the notice and cure period, if any, provided for in the Note; (b) Trustor breaches any other

covenant or provision hereof (other than the payment of money) and such failure continues for 30 days after Trustor's receipt of written notice from Beneficiary.

13. Remedies. Upon any default by Trustor, Beneficiary may declare all sums secured hereby to be immediately due and payable in full, and may accelerate the Obligations Secured, and Beneficiary shall have the right to cause Trustee to sell the Property or any part thereof as provided by applicable law. All provisions of the law of the state where the Land is located relating to deeds of trust are incorporated by reference herein. 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. In any such judicial foreclosure, Beneficiary shall recover its reasonable attorneys' fees together with all costs and expenses, including without limitation, all court costs, experts' fees and cost of evidence of title. In the event of any default by Trustor under the Note which this Deed of Trust secures or under this Deed of Trust, except for the enforcement costs under Section 13 of the Note, Beneficiary shall look solely to Trustor's interest in the Property for satisfaction of the Trustor's obligations under the Note or under this Deed of Trust. Except for the enforcement costs under Section 13 of the Note, in the event of foreclosure or non-judicial sale of the Property pursuant to this Deed of Trust, Beneficiary shall not pursue any action for any deficiency against Trustor. Except for the enforcement costs under Section 13 of the Note, Beneficiary specifically releases Trustor, its officers, employees, elected officials and agents from and against any personal liability under the Note which the Deed of Trust secures and under this Deed of Trust.

14. Actions by Trustee. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary, without affecting the personal liability of any person for payment of the Obligations Secured hereby, Trustee may consent to the making of any map or plat of the Property, join in granting any easement thereon or in any extension agreement or agreement subordinating the lien or charge hereof.

15. Waiver of Remedies. Time is of the essence hereof. Acceptance of payment of money after its due date shall not constitute any waiver under this Deed of Trust or Beneficiary's right to require prompt payment of all other sums when due. No extension of time for payment or renewal of the Obligations Secured or the release from any personal liability of any person directly or contingently liable for any indebtedness secured hereby shall affect the lien or priority of this Deed of Trust. The taking by Beneficiary of any other collateral for the Obligations Secured hereby shall in no way affect or impair the lien or priority of this Deed of Trust and Beneficiary may resort for the payment of the Obligations Secured to its several securities in such order and manner as Beneficiary may determine. Any forbearance by Beneficiary in exercising any remedy or right hereunder shall not be a waiver of or preclude the subsequent exercise of any such remedy or right. The Trustor shall pay all costs of recordation and the partial release fees of Trustee, if any, provided that when the Note is paid in full, there shall be no release fee.

16. Notice. Except for any notice required under applicable law to be given in another manner, any notice to Trustor or Beneficiary provided for in this Deed of Trust shall be given in the manner, and shall be deemed received at the time, provided in the Agreement. Unless a Request for Notice is recorded as provided by law, notice of any Trustee's sale shall be sent solely to Trustor's address set forth therein.

17. Parties Bound. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, administrators, executors, successors and assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter and conversely and the singular number includes the plural and conversely. The term "Trustor" shall mean all persons named as Trustor herein, whether one or more, and Trustor's obligations shall be joint and several. "Trustee" shall include all successor trustees. Any Trustor that has signed this Deed of Trust as a surety or accommodation party or that has subjected its property to this Deed of Trust to secure the debt of another expressly waives the benefits of A.R.S. §§12-1641, 12-1642 and 44-142, § 33-814 and 16 Ariz. R. Civ. P. 17(f) or such similar provisions as may be enacted or adopted hereafter.

18. Trustee. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may, but is not obligated to, notify any party hereto of any pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee. Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and Beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Deed of Trust or the Property, to hold any money and documents and to withhold action or performance until an action shall be brought in a court of competent jurisdiction to determine the rights asserted or the propriety of the demand, notice or action requested and Trustee shall be without liability or responsibility for awaiting such court action. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all its predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and, having so resigned, shall be relieved of all further liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Trustee shall not be liable for any action taken in its discretion and in good faith or upon advice of counsel or upon any information supplied or direction given by Beneficiary.

19. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Land is located. The foregoing sentence shall not limit the applicability of federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust that can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

20. Integration. This instrument constitutes the entire understanding of parties, each of whom has been, or has had the opportunity to be, represented by counsel of each party's choosing, and have been bargained for and are negotiated agreements that set forth the entire agreement with respect to the terms thereof, and there are no oral or written statements, representations, agreements or understandings which modify, amend or vary, or purport to modify, amend or vary any of the terms of such documents.

21. Security Intended. Notwithstanding any provision hereof to the contrary, the parties intend that this document constitute security for the payment and performance of the Obligations

Secured as provided elsewhere herein, and shall be a "deed of trust" as defined in A.R.S. §33-801. If despite that intention a court of competent jurisdiction shall determine that this document does not qualify as a "trust deed" or "deed of trust" within the meaning and purview of Chapter 6.1, Title 33, Arizona Revised Statutes, then, *ab initio*, this instrument shall be deemed a realty mortgage under A.R.S. §33-702, and shall be enforceable as such, the Trustor shall be deemed a "mortgagor," the Beneficiary shall be deemed a "mortgagee," the Trustee shall have no capacity but shall be disregarded and all references to the "Trustee" herein shall be deemed to refer to the "mortgagee" to the extent not inconsistent with interpreting this instrument as though it were a realty mortgage. As a realty mortgage, Trustor as mortgagor shall be deemed to have conveyed the Property *ab initio* to the Beneficiary as mortgagee, such conveyance as a security to be void upon condition that Trustor pay and perform all its Obligations Secured hereby.

22. Release of Deed of Trust. At such time as all of the Obligations Secured have been paid or otherwise satisfied in full, Beneficiary shall irrevocably and unconditionally release and reconvey the Property then held hereunder without any covenant or warranty, express or implied. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Beneficiary has no obligation to grant any partial release or partial reconveyance of the Property from the lien of this Deed of Trust.

[Signatures on following page]



EXHIBIT "A"
LEGAL DESCRIPTION
IRVINGTON PLACE

PARCEL 1:

Lots 1 through 755, an RCP Project, Blocks A, B and C; and Common Area "A", (Landscape Open Space) Common Area "B" (Active Open Space), Common Area "C" (Retention/Detention Basin), Common Area "D" (Drainageways) and Common Area "E" (Private Street) of IRVINGTON PLACE, according to the plat of record in the Office of the County Recorder of Pima County, Arizona, recorded in Book 62 of Maps, Page 63.

PARCEL 2:

A portion of the Northwest Quarter of Section 32 and the Northeast Quarter of Section 31, Township 14 South, Range 14 East of the Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at a flush brass cap at the northwest corner of said Section 32, from which a brass cap in a hand hole at the north quarter corner of said Section 32 bears North 89 degrees 03 minutes 31 seconds East (an assumed bearing) at a distance of 2647.34 feet;

THENCE South 01 degrees 00 minutes 00 seconds East, along the west line of the Northwest Quarter of said Section 32, for a distance of 1509.14 feet to a point on the Northerly line of Julian Wash, as recorded in Docket 2380, Page 224, Pima County Records, said point being the **POINT OF BEGINNING**;

THENCE South 84 degrees 55 minutes 28 seconds West, along said northerly line, for a distance of 60.15 feet to a point on the west line of the east 60.00 feet of the Northeast Quarter of said Section 31;

THENCE North 01 degrees 00 minutes 00 seconds West, along said west line, for a distance of 321.45 feet to a point on the southerly line of the Interstate 10 right of way;

THENCE North 45 degrees 06 minutes 09 seconds East, along said southerly line, for a distance of 166.53 feet to a point on the east line of the west 60.00 feet of the Northwest Quarter of said Section 32;

THENCE North 57 degrees 54 minutes 16 seconds East, along the southerly line of said Interstate 10 right of way, for a distance of 226.57 feet;

THENCE North 84 degrees 35 minutes 45 seconds East, along said southerly line, for a distance of 242.04 feet;

THENCE South 57 degrees 06 minutes 59 seconds East, along said southerly line, for a distance of 316.55 feet to a point on the northerly line of the Diversion Channel as recorded in Docket 4629, page 180, Pima County Records;

THENCE South 34 degrees 06 minutes 25 seconds West, along said northerly line, for a distance of 190.85 feet to the beginning of a curve, concave to the northwest, the center of which bears North 55 degrees 53 minutes 35 seconds West at a distance of 525.00 feet;

THENCE southeasterly, along said northerly line and the arc of said curve, through a central angle of 50 degrees 47 minutes 32 seconds for a distance of 465.41 feet to a point of tangency;

THENCE South 84 degrees 53 minutes 57 seconds West, along said northerly line and the westerly prolongation thereof, for a distance of 257.09 feet to a point on the west line of the Northwest Quarter of said Section 32;

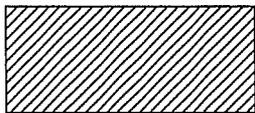
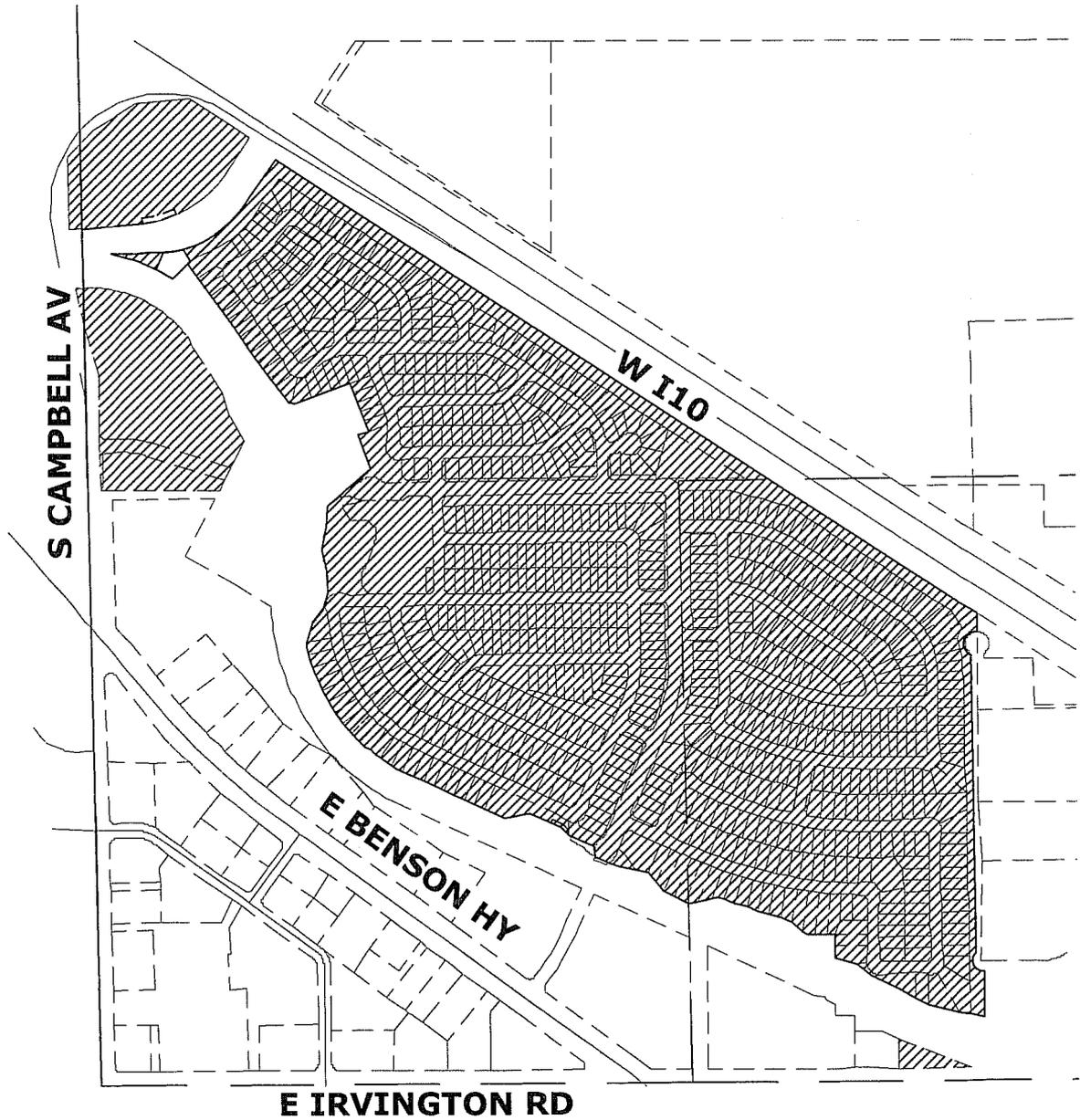
THENCE North 01 degrees 00 minutes 00 seconds West, along said west line, for a distance of 4.48 feet to the **POINT OF BEGINNING**.

EXCEPT therefrom all that portion of above described PARCELS 1 & 2 conveyed to Pima County by Sequence No. 20140760667



Expires 31 March 2015

DEPICTION OF EXHIBIT "A"



= PARCELS 1 & 2. AREA IS 166.714 ACRES +/-.

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PIMA COUNTY SURVEY

A PORTION OF SECTIONS 31 & 32,
TOWNSHIP 14 SOUTH, RANGE 14 EAST,
GILA AND SALT RIVER MERIDIAN,
PIMA COUNTY, ARIZONA