



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: July 11, 2017

Title: Ajo Plaza Subordination Agreements

Introduction/Background:

In 2011 and 2014 Pima County provided U.S. Department of Housing and Urban Development (HUD) grant funds to the International Sonoran Desert Alliance (ISDA) for the initial phases of redevelopment of the historic Ajo Plaza in Ajo, AZ, for affordable housing and economic development. These County HUD funds are currently subordinate in interest to a private first mortgage loan; these subordination agreements will keep the County HUD funds subordinate to new first mortgage financing being secured by ISDA to reduce interest and payments on the Ajo Plaza mortgage.

Discussion:

In an effort to secure more affordable mortgage financing on the Plaza, ISDA has qualified for a below market interest rate loan with the U.S. Department of Agriculture's Community Facilities Loan Program (USDA Loan) combined with a soft second deed from the current mortgage holder (Soft Second) that will significantly reduce the mortgage payments on the Plaza.

Conclusion:

These Subordination Agreements are required as an approval condition for the new USDA Loan and the Soft Second, that will result in more affordable and sustainable mortgage financing for the Ajo Plaza.

Recommendation:

Staff recommends approval of these Subordination Agreements which has been reviewed by the Deputy County Attorney, in order to allow ISDA to secure better mortgage terms for ownership and operation of the Ajo Plaza, an important public facility and historical landmark in Ajo, Arizona.

Fiscal Impact:

There is no fiscal impact to the general fund or grant funded budgets.

Board of Supervisor District:

1 2 3 4 5 All

Department: Community Development & Neighborhood Con Telephone: 520-724-3777

Contact: Marcos Ysmael Telephone: 520-724-2462

Department Director Signature/Date: Daniel Gypfki for MARGARET M. KISTH

Deputy County Administrator Signature/Date: Peur 7-5-2017

County Administrator Signature/Date: C. Dulubay 7/5/17

RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:

Title Security Agency, LLC
One South Church Ave., Suite 1610
Tucson, AZ 85701
Attn: Rebecca Sauers
Loan No.: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION AGREEMENT
(Pima County)

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT OR INSTRUMENTS.

THIS SUBORDINATION AGREEMENT ("**Agreement**") is made as of July _____, 2017 by and among The International Sonoran Desert Alliance, an Arizona non-profit corporation ("**Borrower**"), PIMA COUNTY, a body politic and corporate of the State of Arizona ("**County**"), and U. S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, its successors and assigns ("**USDA**").

RECITALS

A. Pursuant to that certain County HOME Program Agreement, County Contract No. 11-70-I-144104-0411, dated as of July 12, 2011, as amended (the "**County HOME Contract**"), the County agreed to provide HUD HOME Program funding in the principal amount of \$250,000.00 (the "**COUNTY HOME Funds**") to Borrower, for the purpose of **renovating two apartment units in the South Plaza building of the Ajo Plaza** in the **Town of Ajo**, County of Pima, State of Arizona, which is legally described in Exhibit A attached hereto and incorporated herein by this reference ("**Property**"). Borrower's obligations under the **County HOME Contract** which is secured by that certain Deed of Trust and Assignment of Rents (the "**HOME Program Deed**"), **dated as of July 12, 2011 and recorded on November 18, 2011 at Sequence No. 20113220030** in the Official Records of the County of Pima, Arizona (the "**Official Records**"). The County Deed of Trust imposes certain restrictions on the Property.

B. Pursuant to that certain County Community Development Block Contract, County Contract No. CT-CD-16-025, dated as of July 1, 2014, amended on May 3, 2016 (the "**County CDBG Contract**"), the County agreed to provide HUD Community Development Block Grant Program funding in the principal amount of \$30,000.00 plus an addition \$75,000 approved by the amendment, for a total of \$105,000 (the "**COUNTY CDBG Funds**") to Borrower, for the purpose of providing critical improvements to the **South Plaza building of the Ajo Plaza** in the **Town of Ajo**, County of Pima, State of Arizona, which is legally described in Exhibit A attached hereto and incorporated herein by this reference ("**Property**"). Borrower's obligations under the **County CDBG Contract** which is secured by those certain Performance Deeds of Trust (the "**CDBG Performance Deed**") for the contract – **CDBG Performance Deed executed on August 24, 2015, and recorded on September 11, 2015 at Sequence No. 20152540723 in the Official Records of the County of Pima, Arizona (the "Official Records")**, and for the amendment, **CDBG Performance Deed executed on April 15, 2016 and recorded on May 23, 2016 at Sequence No. 20161440752 in the Official Records** (collectively the "**CDBG Performance Deeds**") The CDBG Performance Deeds impose certain restrictions on the Property.

C. The HOME Program Deed and the CDBG Performance Deeds are collectively referred to as the "**County Deeds**".

D. The County HOME Contract and County CDBG Contract (the "**County Contracts**") included County, International Sonoran Desert Alliance ("ISDA") and Ajo Plaza, LLC as parties to the agreements wherein ownership of the Property was vested in Ajo Plaza LLC.

E. ISDA is now purchasing the property from Ajo Plaza LLC and thereby becoming the sole direct owner of the Property.

F. The **USDA Agreement**, the **County Contracts**, **County Deeds** and any and all documents executed by and between Borrower and County with respect to the Loan Proceeds are collectively referred to herein as the "**Borrower Documents**."

G. Pursuant to that certain Community Facilities Loan Agreement by and between Borrower and USDA (the "**USDA Loan Agreement**"), dated as of July ____, 2017 USDA has agreed to make a loan to Borrower (the "**USDA Loan**"), for the acquisition of the Property.

H. The obligations of Borrower for repayment of the Loan are evidenced by a *promissory note* (the "**USDA Note**") in the amount of One Million Seventy-One Thousand Seven Hundred Forty and No/100 Dollars (\$1,071,740.00) and are secured by a USDA Deed of Trust, dated as of July ____, 2017 (the "**USDA Deed**") executed by Borrower, as trustor, for the benefit of USDA, as beneficiary. The USDA Deed is to be recorded in the Official Records. The Loan Agreement, the Note, the Deed of Trust and all other documents evidencing or otherwise relating to the Loan are collectively referred to herein as "**USDA Loan Documents**".

I. As a condition to USDA making the USDA Loan secured by the USDA Deed, USDA requires that the USDA Deed be unconditionally and at all times remain a lien or charge upon the Property, prior and superior to all the rights of County under the **County Deeds** (and County's rights under the **County Contracts**, and any other Borrower Documents, and that County specifically and unconditionally subordinate the County Deeds, the County's rights under the County Contracts, and any other Borrower Documents to the lien or charge of the USDA Deed of Trust.

J. The USDA Loan and the Loan Proceeds are being extended to Borrower to finance the acquisition of Ajo Plaza (the "**Acquisition**") on Borrower's interest in the Property.

K. County and Borrower agree to the subordinations in favor of USDA described in the Recitals above.

L. County further agrees to remain in subordinate position to the existing Department of Health and Human Services Notice of Federal Interest recorded in Pima County Recorder Docket 13897 at page 73.

M. The USDA Loan security interest is first. The Hemenway Loan security interest is second.

AGREEMENT

THEREFORE, for valuable consideration and to induce USDA to make the Loan, County and Borrower hereby agree for the benefit of USDA as follows:

1. Subordination. USDA's Deed securing the USDA Note in favor of USDA, and any modifications, renewals or extensions thereof, together with USDA's right to repayment of the USDA Loan and USDA's rights under any other USDA Loan Documents, shall unconditionally be and at all times remain a lien or charge on the Property prior and superior to the **County Deeds** and County's rights under the **County Contracts** and any other Borrower Documents subject to the terms of this Agreement.

2. Entire Agreement. This Agreement shall be the whole agreement with regard to the priority and subordination of the **County Deeds**, the County's rights under the **County Contracts** and any other Borrower Documents, to the lien or charge of the USDA Deed, together with USDA's rights to repayment of the USDA Loan and USDA's rights under any other USDA Loan Documents, and shall supersede and cancel, but only insofar as would affect the priority of the USDA Deed, any prior agreements as to such subordination including, without limitation, those provisions, if any, contained in the Borrower Documents which provide for the subordination of the **County Deeds** or any other County Document to a deed or deeds of trust or to a mortgage or mortgages.

3. Application of Proceeds. USDA, in making disbursements pursuant to any such agreement, is under no obligation or duty to, nor has USDA represented that it will, see to the application of such proceeds by the person or persons to whom USDA disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part.

4. Consents. County and USDA respectively declare, agree and acknowledge that:

(a) County and Borrower consent to and approve all agreements between Borrower and USDA for the disbursement of the proceeds of the USDA Loan submitted to County and Borrower prior to the execution of this Agreement; and

(b) County and Borrower intentionally and unconditionally waive, relinquish and subordinate the lien or charge of the instruments securing the performance of Borrower under the Borrower Documents, in favor of the USDA's liens or charges of the USDA Deed and other USDA Loan Documents upon the Property and Acquisition as referred to in this Agreement and understand that in reliance upon, and in consideration of, such waiver, relinquishment and subordination, specific loans and advances are being and will be made, and specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

5. Rights Upon Default. Notwithstanding anything to the contrary contained in this Agreement, USDA hereby agrees as follows:

(a) Upon the occurrence of an event of default under the USDA Loan Documents, USDA shall promptly notify County at its address set forth below of the occurrence of such event of default, which notification shall be provided to County contemporaneously with the delivery to Borrower of any notice of default under the USDA Loan Documents;

(b) County shall have the right (i) to receive any notices of default under the USDA Loan Documents and (ii) to cure any default by the Borrower under the USDA Loan Documents within ninety (90) days after its respective receipt of such notice of default under the USDA Loan Documents;

(c) After a default under the USDA Loan Documents but prior to a foreclosure sale or deed in lieu of assignment of the Property and Acquisition thereunder, if County cures the default on a timely basis within the cure periods which apply to the Borrower pursuant to the USDA Loan Documents, USDA will not exercise any right it may have to accelerate the USDA Note by reason of the default so cured. This paragraph 5(c) shall not be deemed to prohibit USDA from accelerating the USDA Note by reason of a later uncured default; and

(d) If County forecloses its deeds of trusts or accepts a conveyance of the Property in lieu of such foreclosure, USDA shall have the right to declare a default under the "due-on-sale" provisions contained in the USDA Loan Documents and accelerate the indebtedness secured thereby and implement remedies thereunder, unless USDA approves of the transfer of the Property to the purchaser at foreclosure

of the **County Deeds** or the recipient of a conveyance of the Property in lieu of such foreclosure, which approval may be granted, conditioned or withheld in USDA's sole discretion.

6. **Standstill.** County declares, agrees, and acknowledges that it will not, without prior written notice to USDA: (i) commence any action to foreclose or exercise any power of sale under the County Deed of Trust or the Borrower Documents; (ii) accept a deed or assignment in lieu of foreclosure for the Property or any part or portion thereof; (iii) take possession or control of the Property, or collect or accept any rents from the Property; (iv) seek or obtain appointment of a receiver for the Property; (v) take any action that would terminate any leases or other rights held by or granted to or by third parties with respect to the Property; (vi) initiate any petition for bankruptcy, assignment for the benefit of creditors or creditor's agreement with respect to the Borrower other than as provided in the Borrower Documents; or (vii) take any other enforcement action against the Property or any part or portion thereof, provided, however, that upon the occurrence of an event of default under the Borrower Documents, County shall have the continuing right to commence to pursue its remedies under the Borrower Documents on account of such default during any cure period allowed by the Borrower Documents, including the right to record a notice of default and to obtain a receiver. In addition, County may, with notice to, but without the consent of the USDA, take such other enforcement action as County shall determine, including, but not limited to, action for specific performance of the obligations of the Borrower under the Borrower Documents. The provisions of this Section 6 shall apply for one hundred twenty (120) days from the date that USDA receives notice of a default under the Borrower Documents.

7. **Subrogation.** Neither County nor its respective successors and assigns shall acquire by subrogation, contract or otherwise any lien upon any other estate, right or interest in the Property or Acquisition (except any which may arise in respect to real estate taxes, assessments or other governmental charges) which is or may be prior in right to USDA's Deed or other USDA Loan Documents, or any extension, consolidation, modification or supplement thereto, unless within sixty (60) days following written notice of such intention by County or its respective successors or assigns, the then holder of the USDA Deed of Trust or security instrument shall fail or refuse to purchase or acquire by subrogation or otherwise such prior lien, estate, right or interest, or shall fail within such period to commence and thereafter proceed diligently to purchase or acquire the same.

8. **Insurance and Condemnation Proceeds.** Notwithstanding any contrary provisions in the Borrower Documents, the determination as to whether proceeds of policies of insurance covering the Property or awards from proceedings in eminent domain may be released for application to costs of restoration of the Property and Acquisition shall be made by the USDA as the senior-most lender in the order of lien priority. If not so applied, the proceeds of all policies of insurance covering the Property or Acquisition or any awards from proceedings in eminent domain or condemnation relating to the Property shall be applied toward the USDA Loan and the Loan Proceeds in the order of lien priority until such obligation is paid in full. In the event that, following any such application and disposition of the insurance proceeds, condemnation award or other compensation, resulting in full repayment of all indebtedness secured by the USDA Loan Documents, any balance remains, and the USDA has no further obligation to disburse any portion of the USDA Loan, then such excess shall be made payable to the junior lender next in line following the order of lien priority until the excess insurance proceeds are exhausted.

9. **Restoration.** Notwithstanding any contrary provision in the Borrower Documents, if the legal holder of the USDA Loan Documents shall at any time release to Borrower any such insurance proceeds or condemnation award for the purpose of restoration of the Property or Acquisition, such release shall not be deemed to be an additional advance under the USDA's USDA Loan Documents nor shall such release otherwise be deemed to be in violation of any restriction upon any amount permitted to be secured by the USDA's USDA Loan Documents.

10. **Further Assurances.** So long as the USDA's Loan Documents shall remain a lien upon the Property or Acquisition or any part thereof, County and its respective successors or assigns, shall execute,

acknowledge and deliver, upon the USDA's demand, at any time or times, any and all further subordinations, agreements or other instruments in recordable form reasonably sufficient for that purpose or that USDA, its successors or assigns may hereafter reasonably require for carrying out the purpose and intent of this Agreement, so long as such further instruments do not contain provisions inconsistent with the terms and conditions of the Borrower Documents.

11. Confirmation. County hereby confirms to and agrees with USDA, and USDA hereby confirms to and agrees with County, as to the following:

(a) Each of USDA and County has delivered to each other, true and complete copies of its documents, and such documents have not been amended, modified or supplemented in any way.

(b) There are no defaults (or conditions or events which, with notice or the passage of time or both, would constitute a default), known to either County or USDA as of the date hereof, by Borrower under its obligations set forth in each's respective documents.

(c) Neither USDA nor County shall enter into any agreement to materially amend or modify the terms of any of their respective liens without notice to and the consent of each other, which consent shall not be unreasonably withheld.

(d) Both USDA and County shall deliver to each other Lender, at the address indicated in Section 12 below, copies of any notices of default delivered to Borrower in connection with each's respective documents.

12. Notices. All notices of any kind which any party hereto may be required or may desire to serve on the others shall be deemed served upon personal delivery, or, if mailed, upon the first to occur of receipt or the expiration of 72 hours after deposit in United States Postal Service, certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to USDA:	U. S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT Arizona State Office 230 N. First Avenue, Suite 206 Phoenix, AZ 85003-1706 Loan No.:
If to County:	Pima County Neighborhood Reinvestment Program Community and Economic Development 2797 East Ajo Way Tucson, AZ 85713-6223 Attn: Housing Program Manager
If to Borrower:	ISDA 401 W. Esperanza Avenue P.O. Box 687 Ajo, AZ 85321-0687 Attention: Aaron Cooper

13. Modification and Release. USDA may, without affecting the subordination of the Borrower Documents: (a) release or compromise any obligation of any nature with respect to the USDA Loan

Documents; (b) release its security interest in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing repayment of the USDA Note; (c) retain or obtain a security interest in any property to secure payment of the USDA Note; or (d) modify, amend, defer, extend, consolidate or supplement any of the original or subsequent USDA Loan Documents; provided, however, that USDA shall not increase the principal amount of the USDA Note without the prior written consent of County.

14. Priority of Payments. In the event of any judicial or nonjudicial sale of the Property or any of the collateral securing the USDA Loan, or any portion thereof, pursuant to the USDA Loan Documents, or of any liquidation or dissolution of Borrower, or of any execution sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or similar proceeding relating to Borrower or any portion of its property, all amounts due under the USDA Loan Documents shall first be paid in full according to the order of lien priority before any payment is made upon or in respect of the obligations under the Borrower Documents.

15. Application of Sections. The provisions of Sections 13 and 14 above are solely for the purpose of defining the relative rights of USDA on the one hand, and County on the other hand, against Borrower and its property and nothing herein shall impair, as between (i) Borrower and USDA and (ii) Borrower and County, the obligations of Borrower under such documents.

16. Event of Default. The parties acknowledge that any default under the Borrower Documents (other than defaults that are timely cured by Borrower or waived by County) shall constitute a default under the USDA Loan Documents and any default under the USDA Loan Documents (other than defaults that are timely cured by Borrower or waived by USDA) shall constitute a default under the Borrower Documents. Notwithstanding the foregoing, in the event of default under the Borrower Documents which is deemed a default under such documents solely because it is a default under the USDA Loan Documents, County agrees not to begin pursuing its available remedies unless and until the USDA has accelerated the USDA Loan or has taken other affirmative action to exercise its rights and remedies under the USDA Loan Documents, beyond the giving of notice of such default.

17. Time of Essence. Time is of the essence of this Subordination Agreement and each and every term thereof.

18. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona, without regard to the choice of law rules of that state, except to the extent that any of such laws may now or hereafter be preempted by Federal law. Borrower and all persons and entities in any manner obligated to USDA under this Agreement (a) consent to the jurisdiction of any Federal or State Court within the State of Arizona, (b) submit to venue in such state, and (c) consent to service of process by any means authorized by Federal law or the law of such state. Without limiting the generality of the foregoing, Borrower hereby waives and agrees not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) any Borrower is not subject to the jurisdiction of the courts of the State of Arizona or the United States District Court for such state; (ii) that such suit, action, or proceeding is brought in an inconvenient forum; or (iii) that the venue of such suit, action, or proceeding is improper.

19. ARS Section 38-511 Notice. This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference. Notwithstanding the foregoing, Borrower and USDA, to the best of their respective knowledge, each acknowledge and agree that no person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement or any other contract that is part of the Borrower Documents on behalf of the State of Arizona, its political subdivisions or any of the departments or agencies of either is or will be, at any time while any of the Borrower Documents or any extension of the Borrower Documents is in effect, an employee or agent of Borrower or USDA in any capacity or a consultant to Borrower or USDA with respect to the subject matter of any of the Borrower Documents.

20. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one original Agreement.

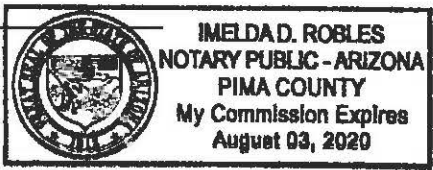
NOTICE: THIS AGREEMENT CONTAINS PROVISIONS WHICH ALLOW THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN LOANS WHICH MAY BE OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT OR INSTRUMENTS AND THE PROCEEDS OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

WITNESS my hand and official seal the day and year in this certificate first above written.

Signature *Imelda D. Robles*
My commission expires August 3, 2020



USDA:

U. S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT

By: _____
Jeff Hooper, Community Programs Specialist

STATE OF ARIZONA)
) ss.
County of Pima)
)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

DESCRIPTION OF PROPERTY

PIMA COUNTY TAX PARCEL NUMBER 401-23-011A, legally described below:

AJO TOWNSITE LOTS 11 THROUGH 21, BLOCK 1, TOGETHER WITH ALL BUILDINGS,
IMPROVEMENTS AND FIXTURES THEREON OR HEREAFTER ERECTED THEREON.

STREET ADDRESS: 15 W. PLAZA STREET, AJO, AZ 85321

END OF EXHIBIT A