



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: 1/5/2021

Assignment, Assumption and Modification of Loan Documents Agreement related to transfer of the
Title: Sahuarita Mission Apartments and County legal agreements securing HUD funds provided by the County

Introduction/Background:

County provided Federal funds from the U.S. Department of Housing and Urban Development (HUD), under County contract number CTN-CD-13*0382 (originally No. 01-39-C-126042-0699), to develop an affordable housing complex for low-income households known as Sahuarita Mission Apartments. The County contract term has expired, however the HUD Home Investment Partnership Program (HOME Program) Funds invested by the County require a 20-year compliance period (HUD Affordability Period) which starts at project completion date (March 23, 2002) and ends on March 24, 2022. In order to secure compliance with the HUD regulations and Affordability Period, the County has recorded Covenants, Conditions and Restrictions (CCR's) that run with the land, as well as subordinate Deed of Trust lien position for the amount of the HUD funds provided.

Discussion:

The Current Owner is selling the property to a qualified buyer (New Owner) which is still subject to the HUD Affordability Period, therefore the existing County Deed of Trust must be assigned to the new owner. The deadline for closing on the property transfer is January 15, 2021. In relation to the sale and transfer of Sahuarita Mission Apartments to the new owner, the three legal documents described below are required by the new Senior Lender and are attached for County execution.

1. **Assignment, Assumption, and Modification of Loan Documents** (Assigns County Note and Deed to new owner);
2. **Subordination Agreement** (required to keep County Note and Deed subordinate to new Senior Lender's Mortgage);
3. **Amendment One to the CCR's** (required to correctly reference project completion date for HUD Affordability Period).

Conclusion:

County housing staff have reviewed the New Owner's financial statements, resume, property portfolio and Arizona Department of Housing Compliance Certificate, to determine that New Owners have the capacity to maintain the first mortgage debt as well as all the HUD affordable housing standards required by the County CCR's and Deed of Trust. In addition all the three legal document listed above have been reviewed and approved by a Deputy County Attorney.

Recommendation:

County staff recommend approval, including Board approval for the Board Chairman/Chair to sign the final form of the above referenced legal documents, barring on substantive changes are made to the documents.

Fiscal Impact:

There is no impact to the County budget.

Board of Supervisor District:

☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐ All

Department: Community and Workforce Development

Telephone: 724-2460

Contact: Marcos Ysmael

Telephone: 724-2462

Procure Dept 12/28/20 10:41

12/28/20 10:41

Department Director Signature/Date: Samuel P. Lewis 12/23/20

Deputy County Administrator Signature/Date: Jim 24 Dec 2020

County Administrator Signature/Date: C. R. Helberg 12/28/20



PIMA COUNTY

COMMUNITY & WORKFORCE
DEVELOPMENT

MEMORANDUM

Harry Lewis, Procurement Contract Specialist, and
Julie Castañeda, Clerk of the Board

From: Marcos Ysmael, Affordable Housing Program Manager
Ph: (520) 724-2462
Email: Marcos.Ysmael@pima.gov

Date: December 24, 2020

Subject: Board of Supervisor's Addendum Item Request; 1/05/2021 Board of Supervisors Meeting;
Sahuarita Mission Apartments, Assumption Agreement and related documents for property
transfer to new owner

Pima County provided Federal funds from the U.S. Department of Housing and Urban Development (HUD), under County contract number CTN-CD-13*0382 (originally No. 01-39-C-126042-0699), to develop an affordable housing complex for low-income households known as Sahuarita Mission Apartments (formerly Sahuarita Ridge Apartments). The County contract term has expired, however the HUD Funds invested by the County require a 20-year compliance period (HUD Affordability Period) which starts at project completion date (March 23, 2002) and ends on March 24, 2022. The current owner is selling the property which is still subject to the HUD Affordability Period, therefore the existing County Deed of Trust must be assigned to the new owner.

The following legal documents related to the transfer have been placed on the 1/5/21 BOS Addendum; once approved they will require the BOS Chair or Chairman's signature. The remaining required signatures will be obtained when the property transfer closes escrow on January 15, the Title Company will then have them recorded with County Recorder and the fully executed and recorded documents will be returned for County's records.

1. **Assignment, Assumption, and Modification of Loan Documents** (Assigns County Note and Deed to new owner);
2. **Subordination Agreement** (required to keep County Note and Deed subordinate to new Senior Lender's Mortgage) – **the Draft attached initially will be replace with Final agreement prior to 1/5/21;**
3. **Amendment One to the CCR's** (required to correctly reference project completion date for HUD Affordability Period).

As soon as these documents have been signed, notarized and attested by the Clerk of the Board, please call me (520-724-2462) or Ryan Stephenson (520-724-3751). We will pick up the documents and forward them to the Title Company for the remaining signatures and recording.

If you have any questions, please call me (724-2462) or send email (marcos.ysmael@pima.gov) and ,
Ryan.Stephenson@pima.gov.

Thank you for your attention to this request.

Prepared by, and after recording
return to:
Moss & Barnett (JMS)
A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 6-15-2020) (modified/County)

Freddie Mac Loan No. 508305969
Property Name: Sahuarita Mission

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Revised 6-15-2020) (modified/County)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into as of [] by and between (i) NorthMarq Capital, LLC, a limited liability company organized and existing under the laws of Minnesota (together with its successors and assigns, “**Senior Lender**”) and (ii) Pima County (“**Subordinate Lender**”).

RECITALS

- A. Sahuarita Mission Owner LLC, a limited liability company organized under the laws of Arizona (“**Borrower**”) is the owner of certain land located in Pima County, Arizona, described in Exhibit A (“Land”). The Land is improved with a multifamily rental housing project (“**Improvements**”).
- B. Senior Lender has made or is making a loan to Borrower in the original principal amount of \$[3,750,000.00] (“**Senior Loan**”) upon the terms and conditions of a Multifamily Loan and Security Agreement dated as of [] between Senior Lender and Borrower (“**Senior Loan Agreement**”) in connection with the Mortgaged Property. The Senior Loan is secured by a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date of the Senior Loan Agreement (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property**.”
- C. Pursuant to a _____ dated _____ between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender, as successor-in-interest to Community Services of Arizona, Inc., has made or is making a loan to Borrower’s predecessor-in-interest in the original principal amount of \$467,997.00 in grant funds from the U.S. Department of Housing and Urban Development (“HUD”) (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Deed of Trust dated June 28, 1999, as assigned by Assignment of Deed of Trust dated June 28, 1999 (collectively, “Subordinate Mortgage”) encumbering all or a portion of the Mortgaged Property. Borrower will assume the Subordinate Loan and all of the Subordinate Loan Documents (as defined below) pursuant to an Assignment, Assumption and Modification of Loan Documents (“Assumption”) by and between Sahuarita Leased Housing Associates I, Limited Partnership, as Assignor, Borrower, as Assignee, and Subordinate Lender, to be dated and recorded in the Recording Office (as defined below) on or about the date hereof.

- D. The Senior Mortgage will be recorded in the Official Records of Pima County, Arizona (“**Recording Office**”). The Subordinate Mortgage is recorded in the Recording Office at Docket 11117, Page 1448 (Assignment of Deed of Trust at Docket 11118, Page 1350).
- E. The execution and delivery of this Agreement is a condition of Senior Lender’s making of the Senior Loan.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings:

The terms “**Condemnation**,” “**Imposition Deposits**,” “**Impositions**,” “**Leases**,” “**Rents**” and “**Restoration**,” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Agreement.

“**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Lender if Senior Lender acquires title to the Mortgaged Property.

“**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

“**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Lender: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for

any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

“Enforcement Action Notice” means a Notice given from Subordinate Lender to Senior Lender following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

“Lien” means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

“Loss Proceeds” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“Notice” means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

“Regulatory Agreement” means, collectively, (i) the Home Investment Partnership Program Declaration of Covenants, Conditions, and Restrictions between Borrower’s predecessor-in-interest and Subordinate Lender dated August 4, 1999 and recorded in the Recording Office at Docket 11117, Page 1427; as amended by (ii) Amendment One to the Declaration of Covenants, Conditions and Restrictions for Sahuarita Mission Apartments by and between Borrower’s predecessor-in-interest and Subordinate Lender dated on or about the date hereof and to be recorded in the Recording Office on or about the date hereof.

“Senior Indebtedness” means the “Indebtedness” as defined in the Senior Loan Agreement.

“Senior Lender” means the “Lender” as defined in the Senior Mortgage. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

“Senior Loan Documents” means the “Loan Documents” as defined in the Senior Loan Agreement, as such documents may be amended.

“Senior Mortgage Default” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Agreement.

“Senior Note” means the promissory note or other evidence of the Senior Indebtedness and any replacement of the Senior Note.

“Subordinate Indebtedness” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“Subordinate Lender” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Documents” means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Regulatory Agreement, the Assumption, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“Subordinate Mortgage Default” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), Subordinate Lender to take an Enforcement Action.

“Subordinate Note” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“Surplus Cash” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (a) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Deposits.
- (b) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

2. Subordinate Lender’s Representations and Warranties.

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) No Subordinate Mortgage Default has occurred and is continuing.
 - (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$467,997.00.

- (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
 - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
 - (iii) Accept any prepayment of the Subordinate Indebtedness.

3. Terms of Subordination.

- (a) Agreement to Subordinate. The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness. Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (c) Payments Before Senior Loan Default; Soft Subordinate Debt. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 10 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Senior Loan Default or Bankruptcy.
 - (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of Section 3(d) of this Agreement will apply.

- (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
 - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
 - (B) Any proceeds from any Enforcement Action.
 - (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.

4. Default Under Subordinate Loan Documents.

- (a) Notice of Subordinate Loan Default and Cure Rights.
 - (i) Subordinate Lender will deliver to Senior Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.
 - (ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior

Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:

- (A) Discontinues its pursuit of any cure.
 - (B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.
- (iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.
- (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.
- (i) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Senior Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).
 - (ii) Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
 - (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).
 - (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.
 - (iii) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior

Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.

- (iv) Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

5. Default Under Senior Loan Documents.

- (a) Notice of Senior Loan Default and Cure Rights.
 - (i) Senior Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents.
 - (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.
 - (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and

preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property.

- (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

- (i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:
 - (A) To conduct a separate sale of any portion of the Mortgaged Property.
 - (B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.
 - (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Lender determines.
- (ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:
 - (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
 - (B) Modify or amend in any respect any provision of the Senior Loan Documents.

- (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

6. **Conflicts.** If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

- (a) Extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default.
- (b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.
- (c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

7. **Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.**

(a) Insurance.

- (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender.
- (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender.
- (iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender.
 - (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.
 - (iii) If Senior Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.
 - (iv) If Senior Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.
- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.

- (d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same terms and conditions given by Senior Lender.
- (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of approval or consent for the same or substantially the same matter is also granted to Senior Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).
- (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.
- (h) Certification. Within 10 days after request by Senior Lender, Subordinate Lender will furnish Senior Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

8. Refinancing. Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such

refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

9. **Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

10. **Notices.**

- (a) Any Notice required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

Notices intended for Senior Lender will be addressed to:

NorthMarq Capital, LLC
3500 American Boulevard West, Suite 500
Bloomington, Minnesota 55431
Attention: Servicing Dept.

Notices intended for Subordinate Lender will be addressed to:

Pima County
130 West Congress Street
Tucson, Arizona 85701
Attention: Pima County Board of Supervisors

- (b) Any party, by Notice given pursuant to this Section 10, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 10.

11. **Miscellaneous Provisions.**

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Senior Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender to further evidence or implement the provisions and intent of this Agreement.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located. **This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.**
- (f) Severable Provisions. If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (g) Term. The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events:
 - (i) The payment of all the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Lender.
 - (ii) The payment of all the Subordinate Indebtedness, **or if no payment is required the satisfaction of all other obligations under the Subordinate Loan Documents,** other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.
 - (iii) The acquisition by Senior Lender or by a third-party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of

foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.

- (iv) With the prior written consent of Senior Lender, without limiting the provisions of Section 4(b)(iv), the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SENIOR LENDER:

NorthMarq Capital, LLC
a Minnesota limited liability company

By: _____
Name: Paul W. Cairns
Title: Senior Vice President

[illegible]

On _____, 2020, before me, the undersigned, a Notary Public in and for the State of Minnesota, duly commissioned and sworn, personally appeared Paul W. Cairns, to me known to be the Senior Vice President of NorthMarq Capital, LLC, a Minnesota limited liability company, and acknowledged the foregoing instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for Minnesota

My Commission Expires: _____

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**

SUBORDINATE LENDER:

PIMA COUNTY

_____, Chair
Board of Supervisors

Date: _____

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, the _____ of Pima County, on behalf thereof.

Signature of Person Taking Acknowledgement

Title

Serial Number, if any

[PIMA COUNTY SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

PIMA COUNTY

ATTEST:


Name: _____
Clerk of the Board

Date: _____

[PIMA COUNTY SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

PIMA COUNTY

APPROVED AS TO CONTENT



Director, Community & Workforce
Development

Date: 12/23/20

[PIMA COUNTY SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

PIMA COUNTY

APPROVED AS TO FORM:



Name: Stacey Roseberry
Deputy County Attorney

Date: 12/23/2020

[END OF PIMA COUNTY SIGNATURE PAGES]

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE AND ACKNOWLEDGMENT PAGE FOLLOWS]**

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated as of the date first set forth above, by and between NorthMarq Capital, LLC, a limited liability company organized and existing under the laws of Minnesota (together with its successors and assigns), and Pima County, and consents to the agreement of the parties set forth in this Agreement.

BORROWER:

Sahuarita Mission Owner LLC,
an Arizona limited liability company

By: FSO Sahuarita LLC,
an Arizona limited liability company
Its: Manager

By: Camelback Real Estate Equity LLC,
an Arizona limited liability company
Its: Manager

By: _____
Name: Jeffrey Sherman
Its: Sole Member

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Jeffrey Sherman, Sole Member of Camelback Real Estate Equity LLC, an Arizona limited liability company, Manager of FSO Sahuarita LLC, an Arizona limited liability company, Manager of Sahuarita Mission Owner LLC, an Arizona limited liability company, on behalf of the limited liability company.

Signature of Person Taking Acknowledgement

Title

Serial Number, if any

EXHIBIT A

LEGAL DESCRIPTION

[INSERT FINAL LEGAL DESCRIPTION]

EXHIBIT A

Legal Description

All those parts of Lots 11 and 12 of THE QUORUM, as recorded in Book 38 of Maps and Plats at page 16 in the Pima County Recorder's Office, lying within Section 35, Township 17 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the Southwest corner of said Lot 12;

THENCE South 89 degrees 39 minutes 45 seconds East, along the South line of said Lot 12, a distance of 150.08 feet to the TRUE POINT OF BEGINNING;

THENCE North 01 degrees 29 minutes 27 seconds West, along a line parallel to the West line of said Lot 12, a distance of 367.11 feet to a point on the North line of said Lot 12;

THENCE South 89 degrees 39 minutes 45 seconds East, along the North line of said Lots 11 and 12, a distance of 343.42 feet;

THENCE South, a distance of 183.47 feet to a point on the Westerly prolongation of the North line of Lot 2 of THE QUORUM;

THENCE South 89 degrees 39 minutes 45 seconds East, along said prolongation, a distance of 5.00 feet to a point 485.58 feet Westerly of the Northeast corner of said Lot 2;

THENCE South, a distance of 183.46 feet to a point on the South line of said Lot 11;

THENCE North 89 degrees 39 minutes 45 seconds West, along the South line of Lots 11 and 12, a distance of 338.87 feet to the TRUE POINT OF BEGINNING.

ASSIGNMENT, ASSUMPTION AND MODIFICATION OF LOAN DOCUMENTS

Sahuarita Mission

THIS ASSIGNMENT, ASSUMPTION AND MODIFICATION OF LOAN DOCUMENTS AGREEMENT (this “**Agreement**”) is made as of _____, 2021, by and between SAHUARITA LEASE HOUSING ASSOCIATES I, LIMITED PARTNERSHIP, a Minnesota limited partnership (“**Assignor**”), SAHUARITA MISSION OWNER LLC, an Arizona limited liability company (“**Assignee**”), and PIMA COUNTY (the “**Lender**”). Collectively, Assignor, Assignee and Lender are referred to herein as the “**Parties**”.

RECITALS

A. Pursuant to that certain Purchase Agreement by and between Assignor and FSO Real Estate Services LLC, an Arizona limited liability company and an affiliate of Assignee, dated September 22, 2020, as amended by that certain (i) First Amendment to the Purchase Agreement dated October 6, 2020, (ii) Second Amendment to Purchase Agreement dated October 15, 2020, and (iii) Third Amendment to Purchase Agreement dated November 16, 2020, and as assigned to Assignee and as further amended, Assignee has purchased from Assignor certain real property and the buildings, fixtures, structures, improvements and certain common areas collectively known as Sahuarita Mission located in Green Valley, Arizona (the “**Project**”) and more particularly described on Exhibit A attached hereto and made a part hereof.

B. As part of the consideration for the purchase of the Project, Assignee has agreed to assume all of Assignor’s right, title, interest, duties and obligations under and in connection with the Loan Documents (as such term is defined below), and Assignor has so agreed, provided that Assignee executes and delivers this Agreement to Assignor and Lender.

C. Community Services of Arizona, Inc., an Arizona nonprofit corporation (the “**Original Lender**”), loaned Sahuarita Ridge Apartments, L.L.C., an Arizona limited liability company (the “**Original Borrower**”), \$467,997 (the “**HOME Loan**”) pursuant to that certain Promissory Note, dated June 28, 1999 and delivered by the Original Borrower to the Original Lender (the “**Original Note**”) and that certain Deed of Trust executed by the Original Borrower for the benefit of the Original Lender, dated June 28, 1999 and recorded in the Pima County, Arizona recorder’s office (the “**Official Records**”) on August 24, 1999 in Docket 11117, Page 1448 (the “**Deed of Trust**”).

D. The Original Lender assigned the Original Note and the Deed of Trust to Lender pursuant to that certain Assignment of Deed of Trust by Original Lender, dated June 28, 1999 and recorded in the Official Records on August 25, 1999 in Docket 11118, Page 1350.

E. The Original Note was amended and restated pursuant to that certain Amended and Restated Promissory Note, dated July 2, 2013, by and between the Original Borrower and Lender (the “**Note**” and together with the Deed of Trust, the “**Loan Documents**”).

F. Assignor acquired the Project from the Original Borrower pursuant to that certain Warranty Deed, dated July 3, 2013 and recorded in the Official Records on July 8, 2013 at Sequence 20131890132. Pursuant to that certain Contract Amendment by and between Original Lender and Lender, dated July 2, 2013, Lender consented to Assignor’s assumption of the HOME Loan and the Loan Documents and the Original Borrower’s right, title, interest, duties and obligations thereunder.

G. Assignor desires to assign the Loan Documents to Assignee and Assignee desires to assume the Loan Documents from Assignor pursuant to this Agreement. Lender has consented to such assignment and assumption as set forth in this Agreement.

H. Assignee and the Lender desire to modify certain terms of the Loan Documents.

STATEMENT OF AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. **Recitals**. The above Recitals are hereby incorporated by reference as if fully set forth herein.

2. **Definitions**. Capitalized terms not otherwise defined herein shall have the meanings given such terms in the Loan Documents.

3. **Assignment and Assumption of Obligations**. Assignor hereby assigns to Assignee all of Assignor’s right, title, interest, duties and obligations in and to the Loan Documents. Assignee hereby accepts the assignment of all of Assignor’s rights, title, duties and obligations under the Loan Documents, including but not limited to, the requirement to pay the Note, and otherwise comply with the duties and obligations of the Loan Documents.

4. **Modifications to the Loan Documents**.

(a) All references in the Loan Documents to “Sahuarita Ridge Apartments, L.L.C.” shall refer to the Assignee.

(b) The Maturity Date set forth in the Note is hereby amended to March 24, 2022.

(c) All notices to Borrower or Trustor under the Loan Documents shall be delivered to Assignee as follows:

If to Borrower: Sahuarita Mission Owner, LLC
c/o FSO Sahuarita LLC
645 E. Missouri Avenue, Suite 170
Phoenix, AZ 85012
Attn: Jeffrey Sherman

with a copy to: Reno & Cavanaugh, PLLC
455 Massachusetts Avenue NW, Suite 400
Washington, DC 20001
Attn: Cody Bannon

5. Other Provisions of the Loan Documents. All other provisions of the Loan Documents are hereby confirmed and ratified according to their respective terms. Nothing herein shall in any manner impair, alter, waive, annul, vary or affect any provision, condition or covenant therein, except as specifically provided herein, nor affect or impair any rights, powers, or remedies under the Loan Documents, it being the intent of the Assignee and Lender that the terms and provisions of the Loan Documents will continue in full force and effect except as modified hereby.

6. Consent to Assignment, Assumption and Modification of the Loan Documents. Lender hereby consents to the assignment of the Loan Documents by Assignor to Assignee, the assumption by Assignee pursuant to this Agreement of all of the obligations of Assignee under HOME Loan and the Loan Documents, and the modifications to the Loan Documents set forth in this Agreement.

7. Continuation of Lien and Security Interests. This Agreement does not constitute the creation of a new debt or the extinguishment of the debt evidenced by the Note, nor does it in any manner affect or impair the Deed of Trust or any security agreement executed in connection with the Note or applicable to the Note. Assignee agrees that the Deed of Trust and all other security interests granted by Assignor to Lender continue to be valid and existing liens on the property as described in the Deed of Trust and the Loan Documents.

8. Integration, Entire Agreement, Change, Discharge, Termination or Waiver. The Loan Documents, as modified herein, contain the complete understanding and agreement of Assignee and Lender in respect of the HOME Loan and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations. No provision of the Loan Documents, as modified herein, may be changed, discharged, supplemented, terminated, or waived except in a writing signed by the parties thereto.

9. Binding Effect. The Loan Documents, as modified herein, shall be binding upon and shall inure to the benefit of Assignee and Lender and their successors and assigns and the executors, legal administrators, personal representatives, heirs, devisees, and beneficiaries of Assignee and Lender; provided, however, Assignee may not assign any of its rights or delegate any of its obligations under the Loan Documents and any purported assignment or delegation shall be void.

10. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to conflicts of law principles.

11. A.R.S. Section 38-511 Notice. This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

12. Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

[signature page(s) to follow]

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the first date written above.

ASSIGNOR:

**SAHUARITA LEASED HOUSING ASSOCIATES I,
LIMITED PARTNERSHIP**, a Minnesota limited
partnership

By: Sahuarita Leased Housing Associates I, LLC,
a Minnesota limited liability company
its General Partner

By: _____
Mark S. Moorhouse
Senior Vice President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by _____, the _____, on behalf of said company.

Witness my hand and official seal.

Notary Public

My commission expires:

ASSIGNEE:

SAHUARITA MISSION OWNER LLC,
an Arizona limited liability company

By: FSO Sahuarita LLC,
an Arizona limited liability company,
its manager and member

By: Camelback Real Estate Equity LLC,
an Arizona limited liability company,
its manager

By: _____
Jeffrey Sherman
Sole Member

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by _____, the _____, on behalf of said company.

Witness my hand and official seal.

Notary Public

My commission expires:

LENDER:

COUNTY:

PIMA COUNTY

_____, Chair
Board of Supervisors

Date: _____

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2020, by _____, the
_____ of Pima County, on behalf thereof.

Signature of Person Taking Acknowledgement

Title

Serial Number, if any

[PIMA COUNTY SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

PIMA COUNTY

ATTEST:

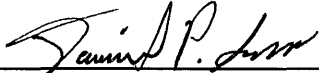
Name: _____
Clerk of the Board

Date: _____

[PIMA COUNTY SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

PIMA COUNTY

APPROVED AS TO CONTENT



Director, Community & Workforce
Development

Date: 12/23/20

[PIMA COUNTY SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

PIMA COUNTY

APPROVED AS TO FORM:



Name: Stacey Roseberry
Deputy County Attorney

Date: 12/23/2020

[END OF PIMA COUNTY SIGNATURE PAGES]

When Recorded, Return To:

Pima County Housing Center
Attn: HOME Program Manager
801 W. Congress Street
Tucson, AZ 85745

AMENDMENT ONE
TO THE
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SAHUARITA MISSION APARTMENTS

This is Amendment No. One (1) to the Declaration of Covenants, Conditions, and Restrictions for Sahuarita Mission Apartment made by and between Pima County, a political subdivision of the State of Arizona ("County"), and Sahuarita Leased Housing Associates I, Limited Partnership, a Minnesota limited partnership ("Current Owner") and recorded in the Office of the Pima County Recorder at Sequence 19991630643 on August 24, 1999 ("the Declaration").

The Property subject to the Declaration and the terms of this Amendment No. One is located at 1091 West Beta Street, Green Valley, Arizona, 85614 and is specifically described in Exhibit B of the Declaration.

RECITALS

- A. On June 15, 1999, County and Community Services of Arizona, Inc. and/or Sahuarita Ridge Apartments, L.L.C. ("the Original Owner") entered into Pima County Contract No. 01-39-C-126042-0699 (now CTN-CD-20-0382) ("the Contract") whereby County provided the Original Owner with HOME Investment Partnership Program Grant Funds in the amount of \$467,997.00 ("HOME funds").
- B. Original Owner used the HOME funds to construct a 52 unit affordable rental housing complex for low-income households. Seven of the units are HOME-assisted which must be rented to households earning at or below 50% of Area Median Income (50% AMI).
- C. On July 3, 2013, the Original Owner transferred the property subject the Declaration to the Current Owner who agreed assume, among other things, the Declaration as well as all conditions referenced therein, including but not limited to the Contract.

- D. Pursuant to Articles III and IV of the Contract and the incorporation of 24 CFR Part 92 into the Declaration, the HOME regulations, which include a mandatory Period of Affordability, apply to the Property.
- E. 24 CFR §92.252(e) states that the Period of Affordability for new construction assisted with HOME funds will be 20 years from the date of completion.
- F. Part II of the Declaration states that the Declaration shall be amended upon project completion in order to reference the project completion date for the purpose of determining the Affordability Period.
- G. Construction was completed upon the issuance of Certificates of Occupancy for all units by Pima County and the submission of the HUD Completion Report on **March 23, 2002**, however the Declaration was not amended at that time.
- H. To comply with the terms and conditions set forth in federal law and regulations for the use of the HOME funds, the Declaration must be amended to reflect project completion date to determine the Period of Affordability.

NOW, THEREFORE, Current Owner and County agree as follows:

Part II – Covenants, Conditions and Restrictions is amended as follows:

1. **Numbered Paragraph 1** titled “Use of Property” is deleted in its entirety and replaced with the following:

Use of Property. The Period of Affordability for the Property commenced on March 23, 2002 and will end at 12:01 a.m. on March 24, 2022. During the Period of Affordability, the Owner shall maintain the property as rental housing and will rent or hold available for rental each unit on a continuous basis. Seven (7) of the rental units at the project shall be HOME-assisted units restricted pursuant to Section 2(a) for the Period of Affordability.

Notwithstanding any provision of this Agreement to the contrary, the forty-five (45) rental units at the project that are not HOME-assisted units shall not be subject to the income, rent or other restrictions of this Agreement.

ALL OTHER PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SAHUARITA MISSION APARTMENTS REMAIN UNCHANGED.

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

SIGNATURES ON FOLLOWING PAGE

COUNTY:

PIMA COUNTY

_____, Chair
Board of Supervisors

Date: _____

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of Pima County, on behalf thereof.

Signature of Person Taking Acknowledgement

Title

Serial Number, if any

[PIMA COUNTY SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

PIMA COUNTY

ATTEST:

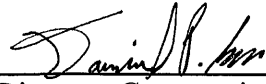
Name: _____
Clerk of the Board

Date: _____

[PIMA COUNTY SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

PIMA COUNTY

APPROVED AS TO CONTENT



Director, Community & Workforce
Development

Date: 12/23/20

[PIMA COUNTY SIGNATURE PAGES CONTINUE ON THE FOLLOWING PAGE]

PIMA COUNTY

APPROVED AS TO FORM:



Name: Stacey Roseberry
Deputy County Attorney

Date: 12/23/2020

[END OF PIMA COUNTY SIGNATURE PAGES]