



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: December 13, 2016

or Procurement Director Award []

Contractor/Vendor Name (DBA): Epidaurus dba Amity Foundation

Project Title/Description:

Dragonfly Village Transitional Housing Development

Purpose:

Provide Affordable Housing for low and very-low income households in transition. This Amendment will extend the contract term for an additional 10 years of affordability as provided for in the original contract promissory note deferral clause, and authorize the Board Chair to sign related legal documents identified in the amendment.

Procurement Method:

N/A

Program Goals/Predicted Outcomes:

Provide affordable transitional housing with supportive services to low and very low-income households with the goal of transitioning to permanent housing and self sufficiency.

Public Benefit:

Affordable housing and supportive services for low-income and very-low income households in transition.

Metrics Available to Measure Performance:

Annual reports and monitoring are required during the affordability period.

Retroactive:

No.

Original Information

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

Effective Date: Termination Date: Prior Contract Number (Synergen/CMS):

[] Expense Amount: \$ [] Revenue Amount: \$

Funding Source(s):

Cost to Pima County General Fund:

Contract is fully or partially funded with Federal Funds? [] Yes [] No [] Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? [] Yes [] No [] Not Applicable to Grant Awards

Vendor is using a Social Security Number? [] Yes [] No [] Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: CT Department Code: CD Contract Number (i.e.,15-123): 13-662

Amendment No.: Two (2) AMS Version No.: 7

Effective Date: 12/13/2016 New Termination Date: 03/25/2045

[] Expense [] Revenue [] Increase [] Decrease Amount This Amendment: \$

Funding Source(s): U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnership Program (HOME Program)

Cost to Pima County General Fund: None

Handwritten notes: TO: COB 11-30-2016 (2) Vers. 7 pgs.: 18

Procure Dept 11/28/16 RM11:17

Contact: Marcos Ysmael

Department: Community Development and Neighborhood Conservation

Telephone: 724-²⁴⁶²~~7462~~ *fx*

Department Director Signature/Date:

Margaret M. Kue

11/22/2016

Deputy County Administrator Signature/Date:

J. Dew

11/28/2016

County Administrator Signature/Date:

C. D. Buckley

11/28/16

(Required for Board Agenda/Addendum Items)

<p>PIMA COUNTY COMMUNITY DEVELOPMENT AND NEIGHBORHOOD DEVELOPMENT</p> <p>PROJECT: <i>Dragonfly Village</i></p> <p>CONTRACTOR: Epidaurus dba Amity Foundation P.O. Box 3043 Tucson, AZ 85702</p> <p>PIMA COUNTY CONTRACT NO: CT-CD-13*662</p> <p>CONTRACT AMENDMENT NO. TWO (2)</p>	<div style="border: 2px solid red; padding: 5px;"> <p style="color: red; font-weight: bold; margin: 0;">CONTRACT</p> <p style="color: red; font-weight: bold; margin: 0;">NO. <u>CT-CD-13-662</u></p> <p style="color: red; font-weight: bold; margin: 0;">AMENDMENT NO. <u>02</u></p> <p style="font-size: small; margin: 0;">This number must appear on all invoices, correspondence and documents pertaining to this contract.</p> </div>
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Original Contract Term:	02/01/2013 – 01/31/2034	Amount:	\$500,000.00
Termination Date Prior Amend:	N/A	Amount Prior Amend:	\$0.00
Termination Date this Amend:	03/25/2045	Amount this Amend:	\$0.00
		Revised Amount:	\$500,000.00

CONTRACT AMENDMENT NO. 2

RECITALS

- A. Pima County (“County”) and Epidaurus, a foreign non-profit corporation incorporated in the State of California and operating in Pima County, Arizona under the trade name “Amity Foundation” (“Contractor”) entered into the above referenced Contract for use of HOME program funds provided by the U.S. Department of Housing and Urban Development (“HUD”) to construct Dragonfly Village, a new, 30-unit multi-family transitional housing development.
- B. In exchange for the loan of \$500,000.00 of federal HOME Investment Partnership Program funds, Contractor agreed operate and maintain “Dragonfly Village Transitional Housing: for very-low and low-income homeless families and individuals and to establish five (5) of the thirty (30) units as “HOME-Assisted Units” subject to federal rent, occupancy and resale restrictions.
- C. The restrictions on the thirty (30) housing units are in full force and effect for a period of twenty (20) years from the date of first occupancy of the last of the five HOME-assisted units to be occupied (“the Affordability Period”).
- D. The last of the five HOME-assisted units was occupied by an eligible tenant on March 25, 2015, therefore, the current Affordability Period currently terminates on March 25, 2035.
- E. Contractor’s performance and adherence to the terms and conditions set forth in the Contract for the entire Affordability Period are secured by the following:
 - 1. Declaration of Covenants, Conditions, and Restrictions for Dragonfly Village Transitional Housing Units recorded in the office of the Pima County Recorder at Sequence No. 20132350606;
 - 2. Deed of Trust and Assignment of Rents – Dragonfly Village Transitional Housing Development recorded in the office of the Pima County Recorder at Sequence No. 20132520185; and
 - 3. Pima County HOME Program Real Estate Non-Recourse Promissory Note (“the Note”).
- F. Under the terms of the Note, repayment of the \$500,000.00 loan, at 0% interest per annum, becomes due in one balloon payment of \$500,000.00 at the end of the current Affordability Period.

- G. The Note further provides “As a special consideration, provided that Maker [Contractor] has not defaulted on either the Deed of Trust or the Contract, County in its sole discretion and with written approval of the Pima County Board of Supervisors, may waive or forgive all or any portion of the loan amount in consideration for an extension of the Affordability Period for a minimum of an additional ten (10) years.”
- H. Contractor has asked County to exercise the discretion allowed under the Note to:
1. Forgive the loan and not require repayment upon compliance with the Affordability Restrictions for the Affordability Period(s) defined herein; and
 2. Extend the Affordability Period for ten (10) additional years.
- I. County has reviewed Contractor’s performance to date and finds that it is in compliance with the terms and conditions of the Contract.
- J. County finds that it is in the best interests of the low-income residents of the County to make affordable rental housing available for the long-term and that extending the Affordability Period for the HOME-Assisted units furthers this goal.
- K. Provided that Contractor remains in compliance with the terms and conditions of the Contract and all documents securing performance and does not default on any such terms and conditions at any time, County agrees to:
1. Extend the Affordability Period for an additional ten (10) years to March 25, 2045; and
 2. As consideration for the ten-year extension of the Affordability Period, forgive all of the loan amount due and owing at the end of the County Affordability Period.

NOW, THEREFORE, THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

1. **GLOSSARY OF TERMS:** The definition of “Affordability Period” is deleted in its entirety and replaced with the following:

The length of time that Dragonfly Village must be operated as a transitional housing project to homeless persons meeting certain income eligibility restrictions. Provided that Contractor does not default on any terms and conditions set forth in this Contract as may be amended from time to time and the Affordability Restrictions as may be amended from time to time, the Affordability Period will be a total of thirty (30) years and will run from March 25, 2015 through March 25, 2045. The portion of the Affordability Period from March 25, 2015 through March 25, 2035 will be known as the “**HUD Affordability Period.**” The portion of the Affordability Period from March 25, 2035 through March 25, 2045 will be known as the “**County Affordability Period.**”
2. **ARTICLE I – TERM AND EXTENSION/RENEWAL/CHANGES,** is amended as follows:
 - 2.1. Paragraph 1 is deleted in its entirety and replaced with the following:

This Contract, as awarded by the Board of Supervisors, will commence on February 1, 2013 and will terminate on March 25, 2045.
3. **ARTICLE III– COMPENSATION AND PAYMENT** Paragraph A is deleted in its entirety and replaced with the following:

HOME funding was initially provided in the form of a **Five Hundred Thousand Dollar (\$500,000.00)** zero interest (0%), deferred-payment loan. Pursuant to the Deferral of

Payments section of the Non-Recourse Promissory Note that Contractor executed as Exhibit D, Attachment 2 to the Contract, and in consideration for the extension of the Affordability Restriction from 20 to 30 years, Pima County will forgive the entire Five Hundred Thousand Dollar (\$500,000.00) loan amount at the end of the County Affordability Period.

4. **ARTICLE X – NON-DISCRIMINATION** is deleted in its entirety and replaced with the following:

Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. During the performance of this contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

5. **ARTICLE XXVII -- ISRAEL BOYCOTT CERTIFICATION** is added to read:

Contractor hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by County up to and including termination of this Contract.

6. **EXHIBIT B – SCOPE OF SERVICES** is amended as follows:

- 6.1. Article I – Overview:

6.1.1. Paragraph A is amended to change “**for no less than 20 years**” to “**for the Affordability Period**”.

6.1.2. Paragraph B, is amended to delete the first sentence and replace it with the following:

Throughout the Affordability Period, as specified in this Contract, five (5) of the 30 units will be designated as “HOME-Assisted.”

- 6.2. Article II – Scope, Paragraph C(3) – Affordability Period is amended as follows:

6.2.1. Subparagraph a – Affordability Period is deleted in its entirety and replaced with the following:

The units in the Project will be rented exclusively to homeless individuals or families with household incomes at or below 60% AMI for the Affordability Period defined in the Contract, except pursuant to subparagraph II(C)(1)(d) above, at least one (1) one-bedroom HOME-Assisted unit will be designated for rent to homeless individuals or families with household earnings at or below 50% AMI for the Affordability Period.

6.2.2. Subparagraph b is amended to delete the first sentence and replace it with the following:

The **HUD Affordability Period** shall be secured through regulatory agreements against the Property in favor of Pima County in the forms set forth in **Exhibit C** and **Exhibit D**.

6.2.3. Subparagraph c is added to read:

In consideration for the forgiveness of the loan of HOME funds provided pursuant to Article III (A) of this Contract as amended, Contractor will:

- i. Execute and record in the Office of the Pima County Recorder the amendment to the CCRs set forth in the attached **Exhibit C-1**; and
- ii. Execute and record in the Office of the Pima County Recorder the County Affordability Period Deed of Trust set forth in the attached, **Exhibit I**.

- 7. Exhibit C-1 – Amendment to the Declaration of Covenants, Conditions, and Restrictions for Dragonfly Village Transitional Housing Units is attached.
- 8. Exhibit I – Pima County Affordability Period Deed of Trust is attached.

All other provisions of this Contract, not specifically changed by this amendment, remain in effect and are binding upon the parties.

IN WITNESS WHEREOF, the parties do hereby affix their signatures and do hereby agree to carry out the terms of this Amendment and of the original IGA cited herein.

PIMA COUNTY:

Chair, Board of Supervisors

Date

ATTEST:

Clerk of the Board


Date

APPROVED AS TO CONTENT:



Director, Community Development & Neighborhood Conservation Date 11/22/2016

APPROVED AS TO FORM:



Tobin Rosen, Deputy County Attorney Date 11/17/16

CONTRACTOR:



Authorized Officer Signature

Rod Mullen CEO

Printed name and title

11/21/2016

Date

**AMENDMENT ONE TO THE
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
DRAGONFLY VILLAGE TRANSITIONAL HOUSING UNITS**

OWNER: Epidaurus, a foreign non-profit corporation incorporated in the State of California and operating in Pima County, Arizona under the trade name “Amity Foundation”

COUNTY: Pima County, a body politic and corporate of the State of Arizona

PROPERTY: CIRCLE TREE RANCH PTN PCL 1 & 2 RS 60/9 aka PTN SW4 NE4 NW4 3.87 acres SEC 1-14-15; Pima County Tax Parcel No. 133-01-025C. Situs address:

10496 E. Tanque Verde Road
Tucson, Arizona

THIS IS THE FIRST AMENDMENT TO THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS MADE IN FAVOR OF COUNTY BY OWNER AS EVIDENCE OF OWNER’S AGREEMENT TO COMPLY WITH CERTAIN RESTRICTIONS IN CONSIDERATION OF RECEIVING A LOAN OF FEDERAL HOME PROGRAM GRANT FUNDS FOR USE IN THE DEVELOPMENT OF IMPROVEMENTS ON THE PROPERTY.

RECITALS

- A. Owner was awarded a 0% interest, deferred-payment loan of HOME Investment Partnership Program grant funds in the amount of \$500,000.00 from County under Pima County Contract No. CT-CD-13*662 (“the Contract”).
- B. Under the Contract, Owner was required to use the HOME Program grant funds to construct a 30 unit, multi-family, rental housing complex with associated community facilities and common areas to operated and maintained as transitional housing for homeless individuals and families with household incomes at or below 60% of the area median income.
- C. Pursuant to the Contract, Owner executed a Deed of Trust and Assignment of Rents – Dragonfly Village Transitional Housing Development recorded in the office of the Pima County Recorder at Sequence No. 20132520185 and a Pima County HOME Program Real Estate Non-Recourse Promissory Note (“the Note”).
- D. Under the terms of the Note, repayment of the loan was not due until the end of a twenty (20) year affordability period (the “HUD Affordability Period”).
- E. The Note further provides that “As a special consideration, provided that [Owner] has not defaulted on either the Deed of Trust or the Contract, County in its sole discretion and with written approval of the Pima County Board of Supervisors, may waive or forgive all or any portion of the loan amount in consideration for an extension of the Affordability Period for a minimum of an additional ten (10) years”

F. County amended the Contract to forgive the repayment of the loan at the end of the County Affordability Period in exchange for Owner continuing to comply with the terms and conditions of the Contract and all associated restrictions for an additional ten (10) years beyond the original twenty (20) year affordability period (the "County Affordability Period") as reflected in the "County Affordability Period Deed of Trust" to be recorded upon the execution of this Amendment.

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner hereby makes this Amendment to the Declaration and declares that the covenants, conditions and restrictions set forth herein will run with the land. OWNER and COUNTY agree as follows:

1. Part II, Paragraph 2 is deleted in its entirety and replaced with the following:

Affordability Period: Pursuant to the terms and conditions set forth in the Contract, as amended, the HOME-Assisted Units shall be rented under the restrictions set forth below for both the HUD Affordability Period and the County Affordability Period at least until March 25, 2045.

2. Part V, Paragraph 4, copy of notice to County is amended to delete "Betty Villegas."

3. Attachment 1 is amended to change the **Physical Address** to:

10496 E. Tanque Verde Road
Tucson, Arizona

ALL OTHER PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DRAGONFLY VILLAGE TRANSITIONAL HOUSING UNITS REMAIN UNCHANGED.

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

PIMA COUNTY

Chair, Board of Supervisors Date

ATTEST:

Clerk of the Board Date

APPROVED AS TO CONTENT:

Director, Community Development and Neighborhood Conservation Date

SIGNATURE OF OWNER ON FOLLOWING PAGE

OWNER

Rod Mullen, President and CEO, Epidaurus

State of Arizona)
) ss
County of Pima)

Acknowledged before me on _____, 2016, by _____
_____, as President and Chief Executive Officer of Epidaurus, a California
non-profit corporation operating in Pima County, Arizona under the trade name "Amity Foundation."

_____ My commission expires: _____
Notary Public

When recorded, return to:

Pima County Community Development and Neighborhood Conservation
801 W. Congress St.
Tucson, AZ 85745

PIMA COUTNY AFFORDABLITY PERIOD DEED OF TRUST

Dragonfly Village Transitional Housing Development

DATE: December ____, 2016

TRUSTOR: Epidaurus, a California non-profit corporation operating in Pima County Arizona under the trade name "Amity Foundation", with a local Arizona mailing address of:
P.O. Box 3043, Tucson, Arizona 85702-3043

TRUSTEE: Stewart Title and Trust of Tucson
whose mailing address is: 7042 E. Broadway Blvd., Tucson, AZ 85710

BENEFICIARY: Pima County, a political subdivision of the State of Arizona,
whose mailing address is:
Pima County Community Development & Neighborhood Conservation
Attention: Pima County HOME Program
801 West Congress Street
Tucson, Arizona 85745

THE PROPERTY: Property situated in Pima County, Arizona, described as follows:
CIRCLE TREE RANCH PTN PCL 1 & 2 RS 60/9 aka PTN SW4 NE4 NW4 3.87
acres SEC 1-14-15

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

Street address and identifiable location of this property:

No situs address assigned, Tucson, Arizona 85749

Pima County Tax Parcel ID Number 133-01-025C

This Deed of Trust is made on the above date, by and between and among the Trustor, Trustee and Beneficiary above named.

Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee in Trust, with Power of Sale, the Property, together with leases, issues, profits, or income therefrom (all of which are hereinafter called "**Property Income**"):

SUBJECT, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income, and further subject to current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

FOR THE PURPOSE OF SECURING:

- A. Performance of the "County Affordability Period" term of the Pima County HOME Program funding contract, Pima County Contract No. CT-CD-13*662, as amended, between Beneficiary and Trustor (the "**HOME Funding Agreement**").
- B. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a Promissory Note or Notes reciting that they are secured by this Deed of Trust.
- C. Performance of each agreement of Trustor contained in this Deed of Trust.
- D. Performance of Trustor of each agreement and covenant contained in the Declaration of Covenants, Conditions, and Restrictions (the "**CC&Rs**") made by the Trustor and recorded in Sequence 20132350606, Office of the Pima County Recorder, amended December 13th, 2016 and recorded in Sequence _____, Office of the Pima County Recorder during the "County Affordability Period" as outlined in the CC&R's.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

- 1. To keep the Property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any action upon the Property in

violation of law; and to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. To provide, maintain, and deliver to Beneficiary fire and other property insurance satisfactory to and with loss payable to Beneficiary. Beneficiary may apply any amounts collected under any fire or other insurance policy to any indebtedness secured hereby and in such order as Beneficiary may determine, or at the sole option of Beneficiary all or any portion of the amount so collected may be released to Trustor. Such application or release does not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorney's fees and costs in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.

4. To pay, before delinquent, all taxes and assessments affecting the Property, all encumbrances, charges, and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

Should Trustor fail to make any payment or to do any action herein provided, Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may believe necessary to protect the security hereof. Beneficiary or Trustee are authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay reasonable attorney's fees and costs and recover the same from Trustor.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note or notes secured by this Deed of Trust or at the legal rate if it secures a contract or contracts other than a promissory note or notes secured by this Deed of Trust. Any amounts so paid by Beneficiary or Trustee shall become a part of the debt secured by this Deed of Trust and a lien on the Property or immediately due and payable at option of Beneficiary or Trustee.

6. That any award of damages in connection with any direct or indirect exercise of governmental police power or eminent domain, or for injury to the Property by reason of public use, or for damages for private trespass or injury thereto, is assigned and will be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and the ownership thereof subject to this Deed of

Trust). Upon receipt of such moneys Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

7. That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

8. That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement, and without liability therefor, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the Property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof; (c) join in granting any easement thereon; (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge hereof.

9. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee will release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. The recitals in such reconveyance of any matters or facts are conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

10. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect the Property Income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such Property Income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such Property Income, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees and costs, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such Property Income, and the application thereof as aforesaid, does not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

11. That upon default by Trustor in (a) the payment of any indebtedness secured hereby, (b) the performance of the "County Affordability Period" obligation in the *HOME Funding Agreement as amended*, (c) the performance of the "County Affordability Period" obligation in the Declaration of Covenants, Conditions and Restrictions ("**CC&Rs**") **as amended**, or (d) in performance of any agreement hereunder, Beneficiary may, after giving written notice of default to Beneficiary and upon Beneficiary's failure to cure such default within ten (10) days of such notice for nonpayment of any amount due or within sixty (60) days of such notice for any other default, declare all sums secured hereunder immediately due and payable by delivery to Trustee of written notice

thereof, setting forth the nature of the default, and of election to cause the Property to be sold under this Deed of Trust.

Trustee will record and give notice of Trustee's sale in the manner required by law. After the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee will sell, in the manner required by law, the Property at public auction at the time and place stated in the notice of Trustee's sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee will deliver to any purchaser its Deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. Any person, including Trustor, Trustee, or Beneficiary, may purchase the Property at such sale.

After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees and costs, Trustee will apply the proceeds of sale to payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. § 33-812. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary also has all other rights and remedies available hereunder and at law or in equity. All rights and remedies under this Deed of Trust are cumulative.

12. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein will, without conveyance from the predecessor Trustee, succeed to all the predecessor Trustee's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor, by registered or certified mail, and by recordation of a Notice of Resignation of Trustee in the Office of the County Recorder in each county in which the Property or some part thereof is situated.

13. That this Deed of Trust applies to, inures to the benefit of, and binds all parties thereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" means the owner and holder of the promissory note or notes secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

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14. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee is a party unless brought by Trustee.

Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

TRUSTOR:

Epidaurus, a California non-profit corporation operating in Pima County, Arizona under the trade name "Amity Foundation".

By: _____

Title: _____

ACKNOWLEDGEMENT:

State of Arizona)

) ss.

County of Pima)

This instrument was acknowledged before me this ____ day of _____, 2016, by _____, as _____ of Epidaurus, a California non-profit corporation operating in Pima County, Arizona under the trade name "Amity Foundation".

_____ Notary Public

My commission will expire: _____

Accepted and Approved by:

Director, Pima County Community Development and Neighborhood Conservation Department

Attachment 1

Parcel Description: Pima County Tax Parcel No. 133-01-025C

Physical Address: No situs address assigned
Tucson, Arizona

LEGAL DESCRIPTION

A PORTION OF THE NORTH HALF OF SECTION 1, TOWNSHIP 14 SOUTH, RANGE 15 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF **PARCEL 1**, AS SHOWN ON THE RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9, RECORDS OF THE PIMA COUNTY RECORDER, PIMA COUNTY, ARIZONA;

THENCE NORTH 00°15'19" EAST 231.01 FEET UPON THE WEST LINE OF **PARCEL 2** AS SHOWN ON SAID RECORD OF SURVEY RECORDED IN BOOK 60 OF SURVEYS AT PAGE 9;

THENCE SOUTH 90°00'00" EAST 205.11 FEET;

THENCE SOUTH 83°22'32" EAST 66.64 FEET;

THENCE NORTH 11°28'18" EAST 7.84 FEET;

THENCE SOUTH 90°00'00" EAST 126.61 FEET;

THENCE SOUTH 37°13'37" EAST 61.97 FEET;

THENCE SOUTH 00°00'00" WEST 42.70 FEET;

THENCE SOUTH 58°57'47" WEST 73.68 FEET;

THENCE SOUTH 49°48'10" WEST 26.02 FEET;

THENCE SOUTH 48°54'32" WEST 33.54 FEET;

THENCE SOUTH 03°54'28" WEST 50.72 FEET;

THENCE SOUTH 84°51'02" EAST 35.60 FEET;

THENCE SOUTH 04°19'09" WEST 235.88 FEET;

THENCE NORTH 89°44'41" WEST 344.96 FEET TO THE WEST LINE OF SAID

PARCEL 1;

THENCE NORTH 00°15'19" EAST 225.32 FEET UPON SAID WEST LINE TO THE **POINT OF BEGINNING.**

CONTAINING 168,656 SQUARE FEET OR 3.872 ACRES, MORE OR LESS.

**AMENDMENT ONE TO THE
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
DRAGONFLY VILLAGE TRANSITIONAL HOUSING UNITS**

OWNER: Epidaurus, a foreign non-profit corporation incorporated in the State of California and operating in Pima County, Arizona under the trade name "Amity Foundation"

COUNTY: Pima County, a body politic and corporate of the State of Arizona

PROPERTY: CIRCLE TREE RANCH PTN PCL 1 & 2 RS 60/9 aka PTN SW4 NE4 NW4 3.87 acres SEC 1-14-15; Pima County Tax Parcel No. 133-01-025C. Situs address:

10496 E. Tanque Verde Road
Tucson, Arizona

THIS IS THE FIRST AMENDMENT TO THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS MADE IN FAVOR OF COUNTY BY OWNER AS EVIDENCE OF OWNER'S AGREEMENT TO COMPLY WITH CERTAIN RESTRICTIONS IN CONSIDERATION OF RECEIVING A LOAN OF FEDERAL HOME PROGRAM GRANT FUNDS FOR USE IN THE DEVELOPMENT OF IMPROVEMENTS ON THE PROPERTY.

RECITALS

- A. Owner was awarded a 0% interest, deferred-payment loan of HOME Investment Partnership Program grant funds in the amount of \$500,000.00 from County under Pima County Contract No. CT-CD-13*662 ("the Contract").
- B. Under the Contract, Owner was required to use the HOME Program grant funds to construct a 30 unit, multi-family, rental housing complex with associated community facilities and common areas to operated and maintained as transitional housing for homeless individuals and families with household incomes at or below 60% of the area median income.
- C. Pursuant to the Contract, Owner executed a Deed of Trust and Assignment of Rents – Dragonfly Village Transitional Housing Development recorded in the office of the Pima County Recorder at Sequence No. 20132520185 and a Pima County HOME Program Real Estate Non-Recourse Promissory Note ("the Note").
- D. Under the terms of the Note, repayment of the loan was not due until the end of a twenty (20) year affordability period (the "HUD Affordability Period").
- E. The Note further provides that "As a special consideration, provided that [Owner] has not defaulted on either the Deed of Trust or the Contract, County in its sole discretion and with written approval of the Pima County Board of Supervisors, may waive or forgive all or any portion of the loan amount in consideration for an extension of the Affordability Period for a minimum of an additional ten (10) years"

F. County amended the Contract to forgive the repayment of the loan at the end of the County Affordability Period in exchange for Owner continuing to comply with the terms and conditions of the Contract and all associated restrictions for an additional ten (10) years beyond the original twenty (20) year affordability period (the “County Affordability Period”) as reflected in the “County Affordability Period Deed of Trust” to be recorded upon the execution of this Amendment.

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner hereby makes this Amendment to the Declaration and declares that the covenants, conditions and restrictions set forth herein will run with the land. OWNER and COUNTY agree as follows:

1. Part II, Paragraph 2 is deleted in its entirety and replaced with the following:

Affordability Period: Pursuant to the terms and conditions set forth in the Contract, as amended, the HOME-Assisted Units shall be rented under the restrictions set forth below for both the HUD Affordability Period and the County Affordability Period at least until March 25, 2045.

2. Part V, Paragraph 4, copy of notice to County is amended to delete “Betty Villegas.”

3. Attachment 1 is amended to change the **Physical Address** to:

10496 E. Tanque Verde Road
Tucson, Arizona

ALL OTHER PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DRAGONFLY VILLAGE TRANSITIONAL HOUSING UNITS REMAIN UNCHANGED.

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

PIMA COUNTY

Chair, Board of Supervisors Date

ATTEST:

Clerk of the Board Date

APPROVED AS TO CONTENT:

Margaret M. Kue 11/22/2016

Date
Director, Community Development and Neighborhood Conservation

SIGNATURE OF OWNER ON FOLLOWING PAGE

OWNER

Rod Mullen, President and CEO, Epidaurus

State of Arizona)
) ss
County of Pima)

Acknowledged before me on Nov 21, 2016, by Rod
mullen, as President and Chief Executive Officer of Epidaurus, a California
non-profit corporation operating in Pima County, Arizona under the trade name "Amity Foundation."

Shirleen M Montgomery My commission expires: Sept 21, 2020
Notary Public

