



Contract Number: CT-PCA-14 X 408
 Effective Date: 5-10-14
 Term Date: 5-9-19
 Cost: \$50,000.-
 Revenue: _____
 Total: _____ NTE: _____
 Action
 Renewal By: 2-1-19
 Term: 5-9-19
 Reviewed by: JLR

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date:

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

The Office of the Pima County Attorney is requesting approval to enter into a contract with The Havins Co, Inc. Effective May 10, 2014 and shall terminate five after five years. The contractor will be providing professional broker and management services to the Pima County Attorney's Forfeiture unit dealing with issues of forfeited property. The amount of the contract for this period shall not exceed \$50,000.00 and will be paid by Anti-Racketeering funds.

CONTRACT NUMBER (If applicable): CT-PCA-14000000000000000408

STAFF RECOMMENDATION(S):

Schedule for approval on the Board of Supervisor's meeting agenda of 5/13/2014

Procure Dept 04/23/14 PM02:18

CORPORATE HEADQUARTERS: _____

Ver. 1
 Vendor. 1
 Pgs. 32
 To: COB - 4-30-14
 Agenda - 5-13-14
 (2)

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: \$50,000.00 and/or REVENUE TO PIMA COUNTY: \$ 0

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

Advertised Public Hearing:

		YES	X	NO
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Board of Supervisors District:

1		2		3		4		5		All	x
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IMPACT:

IF APPROVED: The office of the Pima County Attorney will be able to provide special brokerage services of forfeited property seized.

IF DENIED: The office of the Pima County Attorney will be unable provide special brokerage services of forfeited property seized.

DEPARTMENT NAME:

CONTACT PERSON: Angelique Griffith TELEPHONE NO.: 740-4077

PIMA COUNTY ATTORNEY'S OFFICE		
PROJECT:	Real Estate: Brokerage and Management Services	CONTRACT
CONTRACTOR:	The Havins Co., Inc. Herbert B. Havins, MAI	NO. <u>CT. PCA-14 0000 0000 0000 408</u>
AMOUNT:	Not-to-Exceed \$50,000	AMENDMENT NO. _____
FUNDING:	Anti-Racketeering Fund and/or Proceeds of Sale	This number must appear on all invoices, correspondence and documents pertaining to this contract.

PROFESSIONAL SERVICES CONTRACT

1. Parties. This Professional Services Contract ("*Contract*") is entered between PIMA COUNTY, a body politic and corporate of the State of Arizona ("*County*"); and THE HAVINS CO., INC., an Arizona corporation ("*Contractor*"). County and Contractor are hereinafter collectively referred to as the "*Parties*".

2. Background and Purpose.

2.1 The Pima County Attorney's Office ("*PCAO*") is responsible, pursuant to A.R.S. § 13-4315, for providing for the disposition of real property that has been seized for forfeiture or is otherwise subject to forfeiture pursuant to chapters 6, 7, 8, 9, 23, 34 or 39 of Title 13 of A.R.S. or Rule 7.6 of the Arizona Rules of Criminal Procedure ("*Forfeited Property*").

2.2 At the appropriate time, PCAO is responsible for arranging for the sale of Forfeited Property that is not otherwise disposed of as permitted by law.

2.3 County requires the services of a contractor to sell Forfeited Property.

2.4 Procurement of services related to real estate acquisition or property management is exempt from County's procurement code pursuant to PCC 11.04.020(D).

2.5 PCAO has determined that Contractor is the best qualified to provide services relating to the sale and management of Forfeited Property.

2.6 County and Contractor agree that Contractor will provide services in accordance with the terms of this Contract.

3. Term; Modification.

3.1. Term. This Contract, as awarded by the Board of Supervisors, shall commence on May 10, 2014 (the "**Effective Date**") and shall terminate five (5) years after the Effective Date.

3.2. Modification. Any modification or extension of the Contract termination date shall require a formal written amendment executed by the Parties.

4. Scope of Services.

4.1. Broker Services. Contractor agrees to provide services as the Listing Agent for County for the sale of Forfeited Property (the "**Broker Services**"). For each sale of Forfeited Property, Contractor and County shall enter into an Exclusive Right to Sell Listing Agreement ("**Listing Agreement**") in the form of Exhibit A. Pursuant to the terms of the Listing Agreement, the Forfeited Property shall be offered for sale at the list price set forth on line 40 of the Listing Agreement, which amount shall be agreed to by County and Contractor for each such Forfeited Property. In the event of a conflict between the terms of the Listing Agreement and this Contract, the terms of this Contract shall prevail.

4.2. Prohibited Sales. Pursuant to A.R.S. §13-4315(A)(2), Forfeited Property shall not be sold to any employee of County, any person who participated in the forfeiture, any employee of Contractor, or any member of the immediate family of any of these employees or persons.

4.3. Personnel. Contractor shall employ suitably trained and skilled professional personnel to perform all services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, Contractor shall obtain the approval of County. The key personnel includes Herbert B. Havins.

4.4.

Repairs. Contractor shall make recommendations to County for each Forfeited Property as to maintenance, repairs and/or improvements (collectively "**Repairs**") to be made to the Forfeited Property. County will decide, after taking into consideration the recommendations of Contractor, what Repairs should be made to the Forfeited Property. Contractor will make the Repairs approved by County.

4.5. Management and Rental. Contractor shall provide property management services for the Forfeited Properties which County has decided to rent. When management services are required, they shall be provided in accordance with the following provisions:

4.5.1 County Responsibilities. County shall be responsible for the following:

4.5.1.1 Securing of and changing locks on Forfeited Properties under a seizure order;

4.5.1.2 Turning on utilities for Forfeited Properties under a seizure order;

4.5.1.3 Procuring liability and extended coverage insurance in a form and amount acceptable to a lender of record for a Forfeited Property, provided that as a political subdivision of the State of Arizona, County may self-insure or pool any insurance requirement as authorized by law; and

4.5.1.4 Indemnifying, defending and holding Contractor harmless from and against any and all present and future claims, demands and causes of action, in law or in equity, caused by the negligent or intentionally wrongful acts of the officers, authorized agents or employees of County in connection with the services performed pursuant to this Contract.

4.5.2 Contractor Responsibilities. The scope of the management services to be provided by Contractor is set forth in **Exhibit B**.

4.5.3 Property Management Agreement. Based upon the need for Management services for Forfeited Properties including tenant services, County and Contractor agree to enter into a formal property management agreement that meets the minimum statutory requirements as administered by the Arizona Department of Real Estate. The property management agreement shall be in the form of **Exhibit D**. In the event of a conflict between the terms of **Exhibit D** and the terms of this Contract, the terms of this Contract shall prevail.

4.6. Broker Price Opinion.

4.6.1. Preparation of BPO. Contractor shall prepare a Broker's Price Opinion ("**BPO**") pursuant to A.R.S. 32-3602 for Forfeited Property within twenty (20) days of a request in writing by PCAO. A BPO shall include (i) a condition of title report, (ii) at least two (2) photos of the Forfeited Property taken from different angles, and (iii) at least three (3) comparable sales. Contractor shall retain a complete copy of the BPO in its file. Contractor shall not list any real property for sale for which Contractor has not prepared and transmitted a BPO to PCAO.

4.6.2. Change in Value. Prior to listing a property for sale, Contractor shall advise PCAO if the BPO has changed materially.

4.7. Purchase Contract. All purchase contracts for the sale of Forfeited Property shall contain the language in **Exhibit C**.

5. **Compensation and Payment.**

5.1. Brokerage Fee. In consideration of the brokerage services specified in this Contract, County agrees to pay Contractor six percent (6%) of the gross sales price for any sale of Forfeited Property.

5.2. Monthly Fees and Cost Reimbursement.

5.2.1. BPO Fee. County shall pay Fifty Dollars (\$50.00) to Contractor for each BPO (the "**BPO Fee**").

5.2.2. *Management Fee.* County shall pay contractor a fee of nine percent (9%) of gross rents received (the "*Management Fee*"). Gross rents shall include all property income from all sources.

5.2.3. *Repairs.* Contractor shall submit invoices for reimbursement by County for all Repairs together with supporting documentation (the "*Repair Invoice*").

5.2.4. *Monthly Invoices.* Contractor shall submit no more than one invoice per property per month (the "*Monthly Invoice*"). The Monthly Invoice for each property shall include (i) the BPO fee, if any; (ii) the Management Fee, if any; and (iii) the Repair Invoice, if any. All of the fees and costs in this section 5.2 must be invoiced by Contractor within forty-five (45) days of the date the cost is incurred in order for Contractor to be entitled to reimbursement.

5.3. Documentation. Contractor shall provide detailed documentation in support of all requested payment in accordance with standard real estate sales practices.

5.4. Rights of County. For the period of record retention required under State law, County reserves the right to question any payment made under this Section and to require reimbursement therefore by setoff or otherwise for payments determined to be improper or contrary to this Contract or law.

6. Insurance.

6.1. Contractor shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

6.1.1. *Commercial General Liability* in the amount of \$1,000,000.00 Combined Single Limit Bodily Injury and Property Damage. County is to be named as an Additional Insured for all services performed within the scope of this Contract;

6.1.2. *Commercial or Business Automobile Liability* coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 Combined Single Limit, or \$1,000,000.00 Bodily Injury and \$1,000,000.00 Property Damage;

6.1.3. *Professional Liability Insurance* in the amount of \$1,000,000.00; and

6.1.4. If required by law, *Workers' Compensation* coverage including *Employees' Liability Coverage*.

6.2. Contractor shall provide County with current Certificates of Insurance, which must provide for guaranteed thirty (30) days written notice to County of cancellation, non-renewal or material change.

7. Indemnification.

7.1. Contractor shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by Contractor, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract.

7.2. Contractor warrants that all services provided under this Contract are non-infringing. Contractor will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this Contract.

8. Compliance with Laws. Contractor shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply, but do not require an amendment.

9. Independent Contractor. The status of Contractor shall be that of an independent contractor. Neither Contractor, nor Contractor's officer's agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Contractor shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such taxes. Contractor shall be solely responsible for program development and operation.

10. Subcontractor. Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

11. Assignment. Contractor shall not assign its rights to this Contract, in whole or in part, without prior written approval of County. Approval may be withheld at the sole discretion of County.

12. Non-Discrimination. 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. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this Contract as if set forth in full herein. During the performance of this

Contract, Contractor shall 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.

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

14. Authority to Contract. Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County shall not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

15. Full and Complete Performance. The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

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

17. Termination of Contract for Default.

- a. Upon a failure by Contractor to cure a default under this Contract within ten (10) days of receipt of notice from County of the default, County may, in its sole discretion, terminate this Contract for default by written notice to Contractor. In this event, County may take over the work and complete it by contract or otherwise. In such event, Contractor shall be liable for any damage to County resulting from Contractor's default, including any increased costs incurred by County in completing the work.
- b. The occurrence of any of the following, without limitation to the named events, shall constitute an event of default:
 - i. Abandonment of or failure by Contractor to observe, perform or comply with any material term, covenant, agreement or condition of this Contract, or to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this Contract, including any extension, or a failure to complete the work (or the separable part of the

- work) within the specified time;
- ii. Persistent or repeated refusal or failure to supply adequate staff, resources or direction to perform the work on schedule or at an acceptable level of quality;
 - iii. Refusal or failure to remedy defective or deficient work within a reasonable time;
 - iv. Loss of professional registration or business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude Contractor's performance of this Contract;
 - v. Disregard of laws, ordinances, or the instructions of County or its representatives, or any otherwise substantial violation of any provision of the Contract;
 - vi. Performance of work hereunder by personnel that are not qualified or permitted under state law or local law to perform such services;
 - vii. Commission of any act of fraud, misrepresentation, willful misconduct, or intentional breach of any provision of this Contract; or
 - viii. If a voluntary or involuntary action for bankruptcy is commenced with respect to Contractor, or Contractor becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.

c. In the event of a termination for default:

- i. All finished and unfinished drawings, specifications, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by Contractor for this project shall become County's property and shall be delivered to County not later than five (5) business days after the effective date of the termination;
- ii. County may withhold payments to Contractor arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due County from Contractor is determined; and
- iii. Subject to the immediately preceding Subparagraph 17(c)(ii), County's liability to Contractor shall not exceed the Contract value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.

- d. The Contract will not be terminated for default nor the Contractor charged with damages under this Section 17, if
 - i. Excepting Paragraph 17(b)(viii) above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include: acts of God or of the public enemy; acts of County in either its sovereign or contractual capacity; acts of another Contractor in the performance of a contract with County; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; unusually severe weather; or delays of subcontractors at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and the subcontractor(s).
 - ii. Contractor, within seven (7) days from the beginning of any event of default or delay (unless extended by County), notifies County in writing of the cause(s) therefore. In this circumstance, the County shall ascertain the facts and the extent of the resulting delay. If, in the reasonable judgment of County, the findings warrant such action, the time for completing the work may be extended.
- e. For the purposes of Paragraph 17(a) above, "**Receipt of Notice**" shall include receipt by hand by Contractor's project manager, by facsimile transmission with notice of receipt, or under the Notices clause of this Contract.
- f. If, after termination of the Contract for default, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of County.
- g. The rights and remedies of County in this Section are cumulative and in addition to any other rights and remedies provided by law or under this Contract.

18. Termination for Convenience.

- a. County reserves the right to terminate this Contract at any time and without cause by serving upon Contractor thirty (30) days advance written notice of such intent to terminate. In the event of such termination, the County's only obligation to Contractor shall be payment for services rendered prior to the date of termination.
- b. Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County shall have no further obligation to Contractor, other than to pay for services rendered prior to termination.

19. Notice. Any notice required or permitted to be given under this Contract shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

If to County:

Thomas Rankin, Esq.
Pima County Attorney's Office
32 N Stone Ave, Ste 2000
Tucson, AZ 85701-1416

With a copy to:

Jose Arvizu, Paralegal
Pima County Attorney's Office
32 N Stone Ave, Ste 2000
Tucson, AZ 85701-1416

If to Contractor:

Herbert B. Havins, MAI
The Havins Co., Inc.
5175 W. Ajo Highway
Tucson, AZ. 85735

20. Non-Exclusive Contract. Contractor understands that this Contract is nonexclusive and is for the sole convenience of County, and County reserves the right to obtain like services from other sources for any reason, *provided, however,* that upon execution of a Listing Agreement the services shall be exclusive, as provided in the Listing Agreement, solely with respect to the Forfeited Property identified as the "Premises" in the Listing Agreement.

21. Severability. Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

22. Books and Records.

- a. Contractor shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of County.
- b. In addition, Contractor shall retain all records relating to this Contract at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

23. Public Information.

- a. Any records submitted to County by Contractor that Contractor believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by Contractor.
- b. In the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 *et seq.*, County shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the respondent of the request for release, unless respondent has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of

competent jurisdiction, enjoining the release of the records. For the purposes of this Section, the day of the request for release shall not be counted in the time calculation. Respondent shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

- c. County shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall County be in any way financially responsible for any costs associated with securing such an order.

24. Legal Arizona Workers Act Compliance.

- a. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "**State and Federal Immigration Laws**"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- b. County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- c. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this Section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.
- d. Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section by including a provision in each subcontract substantially in the following form:
 - i. "Subcontractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the subcontractor's books and records to insure that subcontractor is in compliance with these requirements. Any breach of this Section by subcontractor will be deemed to be a material breach of this Contract subjecting subcontractor to penalties up to and

including suspension or termination of this Contract.”

25. Exhibits. The following Exhibits to this Contract are fully incorporated herein as if set forth at length:

<u>Exhibit A</u>	Form of Listing Agreement
<u>Exhibit B</u>	Scope of Management Services
<u>Exhibit C</u>	Addendum to Purchase Contracts
<u>Exhibit D</u>	Form of Property Management Agreement

Remainder of this page intentionally left blank

The Parties have executed this Contract as of the dates set forth below.

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

Sharon Bronson, Chair, Board of Supervisors

Date

ATTEST:

Robin Brigode, Clerk of Board

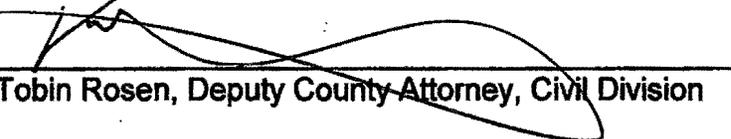
Date

APPROVED AS TO CONTENT:



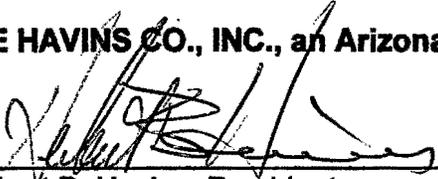
Thomas Rankin, Deputy County Attorney, Criminal Division

APPROVED AS TO FORM:



Tobin Rosen, Deputy County Attorney, Civil Division

THE HAVINS CO., INC., an Arizona corporation



Herbert B. Havins, President

Date 4/7/14

LISTING AGREEMENT

(Exclusive Right to Sell)

THE PRE-PRINTED PORTIONS OF THIS LISTING AGREEMENT ("AGREEMENT") HAVE BEEN APPROVED BY THE TUCSON ASSOCIATION OF REALTORS® / MULTIPLE LISTING SERVICE, INC. ("MLS") THIS IS A BINDING CONTRACT. FOR LEGAL OR TAX ADVICE, CONSULT YOUR ATTORNEY OR TAX ADVISOR.

1. PROPERTY

1. **EXCLUSIVE RIGHT TO SELL:** I/We ("Seller") hereby give the real estate company named on Line 322 ("Listing Broker") an exclusive and irrevocable right to sell the real estate described below together with all improvements, fixtures, personal property described herein, and appurtenances thereon or incidental thereto (collectively the "Premises"). The term "Listing Broker" shall include the licensed real estate agent(s) of the Listing Broker, if any, named on Line 320 ("Listing Agent").
6. **TERM:** This Agreement shall commence on _____ and shall expire at 11:59 P.M. Mountain Standard Time (Arizona) on _____ ("Term"). If prior to the expiration of the Term a purchase contract is entered into in writing between Seller and a Buyer, then this Listing Agreement shall be extended through the close of escrow or the termination of said purchase contract, whichever first occurs ("Extended Term").
10. **SELLER REPRESENTATIONS:** Seller represents to all licensed agents involved in the sale of the Premises, to MLS, and to the Buyer(s), and said parties have a right to rely upon: (i) Seller is the sole owner of the Premises; (ii) no other person(s) or entities' consent shall be required to provide marketable title to the Premises; (iii) Seller has the legal standing, capacity, and authority to offer and convey marketable title to the Premises; (iv) Seller is not currently a party to any other listing agreement for the sale of the Premises; and (v) the information provided in this Agreement is complete and accurate.
16. **PREMISES:** The Premises includes the following described real property:
17. **Real Property Address:** _____ **Assessor's #:** _____
18. **City/Town/Municipality:** _____ **County:** _____ **AZ, Zip Code:** _____
19. **Legal Description:** _____
20. _____
21. Addenda Incorporated: Exempt Delayed Short Sale Other: _____
22. **FIXTURES AND PERSONAL PROPERTY:** The Premises includes all fixtures on the Premises, and any existing personal property specified shall be included in this sale, including but not limited to the following:
24. • free-standing range/oven
25. • ceiling fans
26. • attached floor coverings
27. • window and door screens, sun screens
28. • garage door openers and controls
29. • outdoor landscaping, fountains, and lighting
30. • pellet, wood-burning or gas-log stoves
31. • storage sheds
32. • light fixtures
33. • towel, curtain and drapery rods
- flush-mounted speakers
- storm windows and doors
- attached media antennas/satellite dishes
- attached fireplace equipment
- timers
- draperies and other window coverings
- shutters and awnings
- water-misting systems
- solar systems
- mailbox
- central vacuum, hose, and attachments
- built-in appliances
- pool and spa equipment (including mechanical or other cleaning systems)
- security and/or fire systems and/or alarms
- water softeners
- water purification systems
34. **APPLIANCES AND ADDITIONAL EXISTING PERSONAL PROPERTY:** The Premises shall include the following appliances which are presently located in or upon the Premises: Refrigerator Washer Dryer
36. Other _____

Seller/Seller



37. **Additional items of personal property included in sale:** _____
 38. _____
 39. **Personal property, fixtures and leased items NOT included in sale** _____
 40. _____

2. TERMS AND COMPENSATION

41. **LISTED PRICE:** The Premises shall be offered for sale at \$ _____ ("Listed Price").
42. **TERMS AND CONDITIONS:** The Premises shall be offered for sale pursuant to the provisions of this Listing
 43. Agreement, the Information Property Profile Sheet ("Property Profile Sheet"), and any addenda, data and
 44. other documentation incorporated into this Listing Agreement (collectively "Agreement"). Seller authorizes the
 45. Listing Broker to update and correct information on the Property Profile Sheet as, in Listing Broker's opinion, is
 46. necessary.
47. **MODIFICATIONS:** This Agreement may be modified at any time as agreed upon by Seller and Listing Broker
 48. in writing. The Status Report Form may constitute an addendum to this Agreement.
49. **COMPENSATION: COMPENSATION FOR THE SALE OF THE PREMISES IS NOT SET BY ANY REALTOR®**
 50. **ASSOCIATION OR ANY MULTIPLE LISTING SERVICE. THE COMPENSATION PAYABLE FOR THE SALE**
 51. **OF THE PREMISES IS NEGOTIATED BETWEEN THE LISTING BROKER AND THE SELLER.**
52. **NON-REFUNDABLE RETAINER FEE:** Listing Broker acknowledges receipt from Seller of a non-refundable
 53. retainer fee of \$ _____ for initial consultation and research ("Retainer Fee") which shall be deemed
 54. earned upon receipt and which **Shall** **Shall Not** be credited against any other compensation owed by
 55. Seller to Listing Broker as provided on Lines 55 through 73.
56. **TOTAL COMPENSATION FOR SALE OF PREMISES:** Seller shall pay to Listing Broker _____ % of the
 57. gross sales price and or \$ _____ ("**Total Compensation**")
 58. upon the occurrence of any of the following events:
59. A. During the Term or Extended Term of this Agreement, Listing Broker, individually or in cooperation
 60. with a licensed Broker(s)/Agents ("Cooperating Broker"), produces a Buyer ready, willing, and able to
 61. purchase the Premises according to the terms and conditions of this Agreement or upon such other
 62. price and/or terms and conditions as subsequently agreed to by Seller; or
 63. B. During the Term or Extended Term of this Agreement, Seller sells/transfers/leases/options/auctions/
 64. encumbers/unilaterally terminates this Agreement or otherwise makes the title of the Premises
 65. unmarketable or in any manner makes the Premises unavailable to Listing Broker for sale; or
 66. C. **Within** _____ **days** after the expiration of the Term or Extended Term of this Agreement, Seller
 67. accepts an offer for the sale, lease with option to purchase, exchange, or otherwise conveys title to any
 68. person(s) (or an entity substantially owned by any such person(s)) introduced to the Premises during
 69. the Term or Extended Term of this Agreement by any source whatsoever, unless the Premises has first
 70. been re-listed for sale with another broker on an exclusive-right-to-sell basis; or
 71. D. During the Term or Extended Term of this Agreement, Seller agrees to sell, or transfers the title of all or
 72. any portion of the Premises to any governmental entity resulting from an actual, claimed or threatened
 73. taking of all or part of the Premises by the governmental entity pursuant to its power of eminent domain; or
 74. E. During the Term or Extended Term of this Agreement, a sale of the Premises is prevented by Seller.
75. **PAYMENT OF COMPENSATION:** If the Premises is sold through Listing Broker, the Compensation shall
 76. be paid at and as a condition of the close of escrow. In all other cases set forth in Lines 55 - 73 above, the
 77. Compensation shall be paid upon the occurrence of the event.
78. **ESCROW INSTRUCTIONS:** This Agreement may be delivered to escrow and shall constitute instructions by
 79. Seller to Escrow Agent to pay the Compensation authorized by this Agreement out of proceeds due Seller at time

 Seller/Seller



80.. of closing. If Seller's proceeds are not sufficient in amount to pay such Compensation, Seller shall deposit a sum
81. sufficient to pay said Compensation. If an earnest money deposit is forfeited, Escrow Agent shall pay
82. Compensation to Listing Broker in an amount equal to one-half of the earnest money deposit, not to exceed the full
83. amount of Compensation due pursuant to Lines 51 - 73 above.

84. **CLOSE OF ESCROW:** Close of Escrow ("COE") is when the deed and any other instruments necessary to
85. complete the transfer of title are recorded with the appropriate county recorder's office. Seller shall timely
86. comply with all terms and conditions of the purchase contract, including executing and delivering to Escrow
87. Company all closing documents which may be required to be furnished Seller, and performing all other acts
88. necessary in sufficient time to allow COE to occur by the closing date specified in the purchase contract ("COE
89. Date"). Unless otherwise agreed, Seller shall pay a prorated portion of taxes, assessments, HOA fees, and other
90. costs related to COE that are customarily prorated in the county where the Premises is located. The sale
91. proceeds shall be promptly distributed following COE. Unless otherwise specified in the purchase contract,
92. Seller shall deliver possession, occupancy, existing keys, and/or means to operate all locks, mailbox, security
93. system/alarms and all common area facilities to Buyer at COE.

3. DUTIES AND AUTHORIZATIONS

94. **REPRESENTATION OF SELLER:** Unless otherwise agreed, a Listing Broker acts as agent for Seller only and
95. has the duties of loyalty, obedience, disclosure, confidentiality, and accounting ("Fiduciary Duties") as well as other
96. duties imposed by the Arizona Department of Real Estate ("ADRE") and such Listing shall not be deemed to
97. constitute a conflict of interest. Seller may be responsible for the actions of Listing Broker. Listing Broker shall
98. always exercise reasonable skill and care in the performance of Listing Broker's duties to Seller. Seller is aware
99. that Listing Broker may list other properties that are similar to and/or are located in proximity to the Premises.

100. **REPRESENTATION OF BUYER:** A Buyer's Broker (or "Cooperating Broker") represents only the Buyer and has
101. Fiduciary Duties as well as other duties imposed by ADRE in dealings with Buyer. Buyer's Broker may receive
102. Compensation from Buyer, Seller, or both. Seller authorizes Listing Broker to cooperate with and share
103. Compensation with Buyer's Broker as follows: _____ % of gross sales price or \$ _____.

104. **CONDUCT OF BROKERS:** Regardless of whom they represent, real estate licensees have the obligation to:
105. (i) treat all parties to a transaction fairly; (ii) disclose, in writing, all facts known to the licensee that may materially
106. and adversely affect the consideration to be paid for the Premises; (iii) disclose that Seller or Buyer may be
107. unable to perform; and (iv) disclose any information concerning any material non-obvious (latent) defect existing
108. in the Premises. REALTORS® are further obligated by their Code of Ethics to treat all parties honestly.

109. **DUAL (limited) REPRESENTATION:** A dual agency (or limited agency) may occur when the Listing Broker
110. procures a Buyer for the Property. In this situation, the same real estate company may be representing the
111. Seller's interest and the Buyer's interest. A dual agency may occur in this or in other ways. Brokers and their
112. Agents can legally represent both the Seller and the Buyer with the knowledge and written consent of both the
113. Seller and the Buyer. A Dual Agent has the duties of loyalty, obedience, disclosure, confidentiality and accounting
114. to both the Seller and the Buyer. Seller recognizes that in a dual agency situation, the duties normally owed the
115. Seller by the Listing Broker and his/her Agents may be limited in that confidential information pertaining to the
116. Buyer may not be disclosed to the Seller (and likewise, confidential information concerning the Seller may not be
117. disclosed to the Buyer). Seller agrees that the Listing Broker and his/her Agents shall not be liable for failing or
118. refusing to disclose confidential information. The Dual Agent may receive compensation from the Buyer and/or
119. from the Listing Broker with the written consent of all parties.

120. **CONSENT TO DUAL AGENCY:** Seller Does Does Not authorize Listing Broker to be a Dual Agent.

121.

Seller Initials Required:

Seller/Seller

122. **NON DISCLOSURE:** Sellers and Listing Brokers are not obligated to disclose that a property has been the site of
123. a natural death, suicide, homicide, or any crime classified as a felony, nor that the property was owned or occupied
124. by a person exposed to HIV, or diagnosed as having AIDS or any other disease not known to be transmitted



125. through common occupancy of real estate, nor that the property is located in the vicinity of a sex offender.

126. **SIGNS/MARKETING:** Seller **Does** **Does Not** agree to the placement of a customary "For Sale" and "Sold" sign(s) together with customary sign riders on the Premises through COE. In any event, Seller agrees to immediately remove, or have removed, all "For Sale" signs not belonging to Listing Broker. The placement of directional or other signs on public or private property without the property owner's permission is illegal. Listing Broker/Agent will not illegally place such signage. Seller agrees not to advertise or market the Premises in any manner without the prior written permission of Listing Broker.

132. **VIDEO/STILL IMAGES:** Seller **Does** **Does Not** consent to the taking and placement of video, still or other images of the Premises on the Internet and in other media at the sole discretion of Listing Broker. Seller is cautioned to protect valuable items from view. Listing Broker has no responsibility for loss of such valuable items. Seller understands the public may have unlimited access to the images and may download and/or copy them. Any such images are the property of Listing Broker.

137. **ACCESS AND KEYSAFE:** Seller **Does** **Does Not** authorize the installation and use of a Keysafe that contains an access key to the Premises. A Keysafe permits access at any time to the interior of the Premises by MLS Participants together with potential Buyers. Seller is advised to take appropriate security precautions to protect valuable items. Seller agrees, upon reasonable notice, to cooperate with previews and showings of the Premises at reasonable times. If there are any adult occupants of the Premises other than Seller or Seller's family, or if the Premises is subject to a rental agreement, then Seller shall immediately provide Listing Broker with written permission from all adult occupants authorizing access by the MLS Participants and potential buyers at reasonable times upon reasonable prior notice.

145. **HOME WARRANTY PLAN:** Seller **Does** **Does Not** agree to provide Buyer, at Seller's expense, at COE, a home warranty plan acceptable to Seller. Seller is aware that home warranty plans may provide benefits to Seller, during the Term and/or escrow period, as well as to the Buyer of the Premises.

148. **SUBSEQUENT OFFER:** Seller shall, prior to close of escrow, receive all offer(s) to purchase the Premises unless otherwise agreed upon by Seller in writing. Seller understands that any subsequent offer accepted by the Seller must be a backup offer contingent on the cancellation of the Contract.

151. **INDEMNIFICATION:** As a material condition of this Agreement, Seller agrees that the Tucson Association of REALTORS® ("TAR") and MLS are third-party beneficiaries of this Agreement for the purpose of indemnification. Seller agrees to hold harmless and indemnify TAR, MLS, their Directors, Officers, employees and volunteers as well as Listing Broker and the Cooperating Broker involved in this transaction from any and all claims, damages, liability or other loss, including all attorneys' fees and legal costs incurred arising out of any claim of misrepresentation or for any action or non action by Seller including, but not limited to, the supplying of incorrect information, breach of warranty or any other claim arising out of this Agreement or the sale and purchase of the Premises or as a result of the dissemination of any inaccurate information concerning the listing of the Premises published by a third party website. This provision is to be liberally construed in favor of the indemnified parties.

161.

Seller Initials Required:

Seller/Seller

4. SELLER OBLIGATIONS

162. **FAIR HOUSING:** The Premises shall be offered to all persons without regard to their ancestry, race, religion, color, gender, sexual orientation, handicap, marital status, familial status, age or national origin or any other mandated classification by prevailing federal, state or local laws.

165. **SELLER PROPERTY DISCLOSURE STATEMENT ("SPDS"):** Seller shall complete and return to Listing Broker a SPDS form within five (5) calendar days after receipt thereof. Listing Broker shall have no responsibility, in



167. whole or part, for the preparation of the SPDS. Seller shall fully disclose all material facts known to Seller
168. concerning any previous or current problem(s) or condition(s) that could adversely affect the value or marketability
169. of the Premises. Seller shall immediately advise Listing Broker, in writing, concerning any subsequent changes
170. that occur concerning the Premises or that are subsequently discovered and cause the
171. SPDS form to be amended accordingly and authorizes release of such information to all Cooperating Brokers.
172. Seller agrees to hold Broker harmless from any damages if Seller does not inform Broker of changes in writing.

173. **AFFIDAVIT OF DISCLOSURE:** If the Premises is located in an unincorporated area of the county, and five or fewer
174. parcels of property other than subdivided property are being transferred, the Seller shall be required to provide Listing
175. Broker a completed, notarized State of Arizona Affidavit of Disclosure form required pursuant to Arizona Revised
176. Statute§33-422 within seven (7) days of the commencement date of this Agreement.

177. **DOMESTIC WATER WELL/WATER USE ADDENDUM SELLER'S PROPERTY DISCLOSURE STATEMENT**

178. **("DOMESTIC WATER WELL/WATER USE ADDENDUM SPDS"):** Property Does Does Not have a
179. Domestic Water Well. If the property is served by a domestic water well, Seller shall complete and return the
180. Domestic Water Well/Water Use Addendum SPDS to Listing Broker within five (5) calendar days after receipt
181. thereof. Seller shall fully disclose all material facts known to Seller concerning any previous or current problem(s)
182. or condition(s) that could adversely affect the value or marketability of the Property. Seller shall immediately
183. advise Listing Broker, in writing, concerning any subsequent changes that occur concerning the Property or that
184. are subsequently discovered and cause the Domestic Water Well/ Water Use Addendum SPDS form to be
185. amended accordingly and authorizes release of such information to all Cooperating Brokers. Seller agrees to hold
186. Broker harmless from any damages if Seller does not inform Broker of changes in writing.

187. **WATER / WELL RIGHTS:** The following described water/well rights shall transfer with the subject property, if
188. any: _____

189. **HOMEOWNER'S ASSOCIATION INFORMATION:** Seller shall, upon receipt from Listing Broker, complete,
190. or provide to the Homeowner's Association ("HOA") for completion, the HOA information form and cause the
191. completed form to be returned to Listing Broker within ten (10) days of the delivery thereof to Seller.

192. **HOA RESALE NOTIFICATION:** If the Premises is in a residential HOA/Condominium or Planned Unit
193. Development ("Planned Community") consisting of less than fifty (50) units, Seller shall deliver to Buyer and
194. Escrow Company the disclosure notice to be provided to Buyer within ten (10) days following acceptance of a
195. purchase contract. If the Premises is in a Planned Community with fifty (50) or more units, the HOA shall mail
196. or deliver the required disclosure notice to Buyer and the Escrow Company within ten (10) days following receipt
197. of a written notice of a pending sale of the Premises. Seller shall promptly notify the HOA of the pending sale of
198. the Premises. Upon opening escrow, seller agrees to pay HOA fees required to obtain said disclosure notice.
199.

Seller Initials Required:

Seller/Seller

200. **INSURANCE CLAIMS HISTORY:** Seller shall deliver to buyer a written five-year insurance claims history
201. regarding the Premises (or a claims history for the length of time Seller has owned the Premises if less than
202. five years) from Seller's insurance company or an insurance support organization, or consumer reporting
203. agency, or if unavailable from those sources, from Seller, within five (5) days after contract acceptance.

204. **CONDITION OF PREMISES AND INSURANCE:** Seller is responsible to maintain the Premises in the same or
205. better condition as on the date of execution of this Agreement through COE. Therefore, Seller should consider
206. maintaining appropriate hazard insurance to cover partial or complete destruction of the Premises as well as
207. any loss due to theft, vandalism, water and glass breakage, if available, as well as liability coverage. Seller shall
208. consider notifying insurance company prior to vacancy of property.

Seller/Seller



209. **LEAD BASED PAINT:** If any portion of the Premises was constructed prior to 1978, federal law requires that
210. Buyer be provided a Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards form.
211. If applicable, Seller shall provide Listing Broker, simultaneously with the execution of this Agreement or not
212. later than five (5) days following execution of this Agreement, a completed and executed disclosure form.
213. **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980 ("FIRPTA"):** If Seller is a foreign person
214. or a nonresident alien, Seller shall provide Escrow Agent with a completed and signed FIRPTA certificate.
215. **REFERRALS-RESPONSIBILITY:** If Listing Broker, Cooperating Broker, or their Agents recommend to Seller any
216. person, entity or service, for any purpose, it shall be Seller's duty to independently investigate the qualifications
217. of the referred party. Seller shall hold harmless and indemnify the referring party from any adverse consequences
218. resulting from such referral.

5. FUTURE SELLER OBLIGATIONS

219. **SEPTIC OR ALTERNATIVE TREATMENT SYSTEM:** If the Premises is served in whole or in part by an on-site
220. wastewater treatment facility, Seller shall, at Seller's expense, place in escrow any certification(s) which may be
221. required by any law and/or any appropriate regulatory bodies. Certification may require that the system be
222. inspected, emptied and/or repaired prior to the issuance of the requisite certification. If a public sewer line of
223. sufficient capacity exists within 200 feet of the Premises, the lender or local health authority may require
224. connection to the public sewer line prior to or upon transfer of ownership. Unless otherwise agreed upon with
225. Buyer, such connection to the public sewer line shall be at Seller's expense.
226. **POOL SAFETY:** If the Premises includes a swimming pool or spa, Seller shall provide Buyer with an opportunity
227. to review the relevant pool barrier laws and shall provide Buyer with a notice concerning pool safety which shall
228. be signed by Buyer acknowledging receipt thereof.
229. **DEED/TITLE INSURANCE:** Seller shall convey title to Buyer by warranty deed. Buyer shall be provided,
230. at Seller's expense, an American Land Title Association ("ALTA") Homeowner's Title Insurance Policy, or if not
231. available, an ALTA Residential Title Insurance Policy ("Plain Language" / "1-4" units) or, if not available, a
232. Standard Owner's Title Insurance Policy.
233. **PREMISES CONDITION AT CLOSING:** Seller shall remove all personal property not included in the sale and all
234. debris from the Premises at the earlier of possession by Buyer or COE whichever first occurs.

6. REMEDIES

235. **DISPUTE RESOLUTION:** Listing Broker and Seller agree to mediate any dispute or claim arising out of or relating
236. to this Agreement in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed. All
237. mediation costs shall be paid equally by the parties. In the event that mediation does not resolve all disputes or
238. claims, the unresolved issues shall be submitted for arbitration pursuant to the Uniform Rules of Procedure for
239. Arbitration for the Arizona Superior Court except that the award shall be final and binding and not subject to
240. appeal. Either party may initiate arbitration by giving notice of the dispute stating with particularity that party's
241. position. If the parties are unable to agree upon an arbitrator, either party may apply to the relevant County
242. Superior Court for appointment of an arbitrator by filing a complaint seeking arbitration under the Rules or by a
243. letter to the presiding civil judge with a copy to the other party requesting the appointment of an arbitrator. The
244. parties shall cooperate in the expeditious appointment of an arbitrator. The arbitrator shall determine which of the
245. parties shall pay the fees and costs for arbitration including attorneys' fees by determination of who substantially
246. prevailed. The arbitrator shall treat the fees actually incurred as reasonable, unless he/she makes an express
247. finding that the fees are unreasonable, in which event the arbitrator shall determine the amount of the fees.
248. **ATTORNEYS' FEES:** In any proceeding, including arbitration, for damages, or to enforce any of the provisions
249. of this Agreement, including a claim by Listing Broker for payment of Compensation, the substantially prevailing
250. party shall be entitled to recover from the other party its reasonable attorneys' fees and related expenses
251. including, but not limited to, expert witness fees, fees paid to investigators, and customary court costs.

Seller/Seller

Revised 03/28/2013



7. ADDITIONAL TERMS

- 252. **ARIZONA LAW:** This Agreement shall be governed by Arizona law and is subject to the jurisdiction of Arizona.
- 253. **TIME IS OF THE ESSENCE:** The parties acknowledge that a material and negotiated condition of this Agreement
- 254. is that time is of the essence in the performance of the obligations described herein.
- 255. **DAYS:** All references to days in this Agreement shall be construed as calendar days. The day of the act or event
- 256. from which the time period begins to run is not included and the last day of the time period is included.
- 257. **COPIES AND COUNTERPARTS:** A fully executed facsimile or electronic copy of this Agreement shall be treated
- 258. as an original Agreement. This Agreement may be executed in counterparts, which shall become effective upon
- 259. delivery. All counterparts shall be deemed to constitute one instrument. The Disclosure of Information on Lead-
- 260. Based Paint and/or Lead-Based Paint Hazards form may not be signed in counterpart.
- 261. **ENTIRE AGREEMENT/NO MODIFICATION:** This Agreement, the Property Profile Sheet, and any addenda,
- 262. photographs, data or other documentation which shall be incorporated into this Listing Agreement, constitutes the
- 263. entire Agreement between Seller and Listing Broker and supersedes any prior written or oral representations or
- 264. agreements between Seller and Listing Broker. Any release from or modification to this Agreement requested by
- 265. Seller during the term of this Agreement will be in writing signed by the parties. The pre-printed portions of this
- 266. Agreement may not be modified without the express written permission of MLS. No modifications shall be made to
- 267. this Agreement which shall place Listing Broker and his/her agents in violation of the MLS Rules and Regulations.
- 268. The failure to initial any page of this Agreement will not affect the validity or terms of this Agreement.
- 269. **IMPORTANT NOTE: If Seller signs more than one Listing Agreement during the Term or Extended Term**
- 270. **of this Agreement, Seller could be responsible for paying Compensation to more than one broker upon**
- 271. **the sale of the Premises.**
- 272. **SELLER MATERIALS:** If Seller provides Listing Broker any photographs, floor plans, art work, plot plan
- 273. drawings, or any other items created by or for Seller ("Seller Materials"), Seller, having the authority to do so,
- 274. hereby grants Listing Broker and MLS a non-exclusive right and license to all intellectual property rights
- 275. thereto including the copyright to use and defend Seller Materials in any manner and for any reason. Upon
- 276. termination of this Agreement, upon written request, the Seller Materials shall be returned to Seller.
- 277. **ADDITIONAL TERMS:** _____
- 278. _____
- 279. _____
- 280. _____
- 281. _____
- 282. _____
- 283. _____
- 284. _____
- 285. _____
- 286. _____
- 287. _____
- 288. _____
- 289. _____
- 290. _____
- 291. _____
- 292. _____
- 293. _____
- 294. _____



8. ACCEPTANCE

295. **SELLER**

296. _____ 297. Print Seller Name	_____ Print Seller Name
298. _____ 299. Seller Signature (MO/DA/YR)	_____ Seller Signature (MO/DA/YR)
300. _____ 301. Seller Address	_____ Seller Address
302. _____ 303. City/State Zip	_____ City/State Zip
304. _____ 305. Seller Email Address	_____ Seller Email Address
306. _____ 307. Seller Home Phone Seller Home Fax	_____ Seller Home Phone Seller Home Fax
308. _____ 309. Seller Office Phone Seller Office Fax	_____ Seller Office Phone Seller Office Fax

310. **ACCEPTANCE BY LISTING BROKER:** By signing below the Authorized Signor acknowledges authority to sign
311. this Agreement and accepts from Seller (and Listing Agent if applicable) an irrevocable assignment of the copyright
312. and other intellectual property rights in Seller Materials, including the right to protect and enforce the ownership
313. rights therein. The Authorized Signor reserves a non-exclusive right to utilize Seller Materials in the promotion and
314. marketing of the Premises. If and when the Premises is listed in MLS, the Authorized Signor irrevocably assigns
315. an undivided interest in such rights to MLS. By publication of a listing of the Premises, MLS accepts an irrevocable
316. co-ownership of said property rights during the Term and/or Extended Term of this Agreement. Each party shall
317. have an independent right to enforce and defend the property rights each has acquired in the Seller (Listing
318. Agent's) Materials. Upon termination of this Agreement, Seller Materials shall be returned to Seller upon
319. receipt of written request from Seller.

320. _____ 321. Listing Broker Name	_____ Listing Agent Name	
322. _____ 323. Listing Real Estate Company Name	_____ Listing Real Estate Company Address	
324. _____ 325. Company Phone	_____ Company Fax	_____ Company E-mail Address
326. _____ 327. AUTHORIZED SIGNATURE	_____ PRINT NAME	

File No. _____ Designated Broker or Designee Initials: _____ Date: _____
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EXHIBIT B
TO PROFESSIONAL SERVICES CONTRACT
BETWEEN PIMA COUNTY AND THE HAVINS CO.

SCOPE OF MANAGEMENT SERVICES

1. Purpose; Approvals; Defined Terms. Contractor shall provide, at the request of PCAO, management of property that has been seized for forfeiture or otherwise subject to forfeiture pursuant to chapters 6, 7, 8, 9, 23, 34 or 39 of Title 13 of A.R.S. or Rule 7.6 of the Arizona Rules of Criminal Procedure ("**Forfeited Property**"). Approvals and direction from PCAO shall be given by Thomas Rankin, or another authorized PCAO representative as designated from time to time in writing by the Pima County Attorney (the "**Designated Representative**"). All defined terms in the Professional Services Contract to which this Exhibit is attached shall have the same meaning in this Exhibit B.

2. Maintenance.

2.1. Contractor shall take measures to prevent the deterioration of the Forfeited Property and shall take reasonable measures to maintain the Forfeited Property to ensure that it retains its value until disposed of.

2.2. If Contractor believes that the value of a specific Forfeited Property approved for sale would be enhanced over and above the cost to repair, refurbish, rehabilitate or upgrading such Forfeited Property, Contractor must provide written notification to PCAO with a recommendation regarding such repairs or refurbishment.

2.3. Prudence is to be exercised in maintaining assigned Forfeited Property to ensure that costs and Forfeited Property devaluation do not outweigh the return expected from its sale. Contractor shall not perform any repair, rehabilitation or refurbishing without prior express written permission of PCAO.

3. Security/Safeguards.

3.1. Contractor shall provide for adequate security and safeguards to ensure against loss, damage, or destruction from time of custody acceptance until disposition.

3.2. Contractor shall take all reasonable precautions to ensure that all persons to whom it entrusts its duties are financially sound, properly insured and otherwise reliable. Contractor's compliance with this requirement is not a defense to contractor's liability for the acts or omissions of such persons.

3.3. Any agreement or transaction entered into by Contractor with any vendor, subcontractor, independent contractor, or consignee, must be documented in writing.

4. Loss, Damage or Destruction. In the event of any loss, damage, or destruction of Forfeited Property in its care, custody, and control, Contractor shall take all reasonable steps to protect the Forfeited Property remaining, and take no action prejudicial to the rights of PCAO or third parties with any interest in the Forfeited Property. Contractor shall promptly notify the Designated Representative in writing of the extent of the loss, damage or destruction, and shall take action as directed by PCAO.

5. Sales of Forfeited Property.

5.1. Sales Proceeds. All net sales proceeds (sales price less closing costs) shall be remitted to PCAO as directed by the Designated Representative. The Seller's closing statement shall be approved by the Designated Representative prior to Closing on any sale of Forfeited Property.

5.2. Costs of Sale. Contractor shall manage the costs associated with a sale to keep costs as low as possible consistent with obtaining the greatest return on sales for PCAO and maximum payback.

6. Accounting and Accountability/Payment.

6.1. Contractor shall maintain and provide to the Designated Representative an inventory and financial accounting for all Forfeited Property accepted into its care, custody, and control.

6.2. Contractor shall maintain records of reimbursable management expenses incurred along with the total gross and net proceeds generated from the rental, lease, operation, and sale of each Forfeited Property. The records shall include receipts and documentation sufficient to provide auditable proof of expenditures. The records must be sufficient to provide necessary data for future adjustment related to this contract and to provide accountability of contractor's methods to the general public.

6.3. Contractor's maintenance of accounts and receipts, deposit of monies, and processing of transactions shall be performed in a manner acceptable to the Designated Representative.

6.4. Contractor's financial accounting system is to remain in accordance with generally accepted accounting principles. Any material change in either the format of records or the monthly reporting must have the prior written approval of the

Designated Representative.

7. Property Management Terms and Conditions.

7.1. Hazardous Substances. If Contractor becomes aware of the presence of hazardous or toxic substances at any Forfeited Property (a "**Contaminated Property**"), Contractor shall immediately notify the Designated Representative in writing. After receiving written authorization from the Designated Representative, Contractor shall retain a certified environmental engineer to audit the Forfeited Property and provide advice on the feasibility of decontamination.

7.2. Disposition of Forfeited Property. Forfeited Property accepted for management by Contractor shall be held until written disposition instructions are received from the Designated Representative. Possible dispositions include sale, holding and operating the Forfeited Property for income, transfer to a nonprofit or governmental agency, or use by PCAO or another law enforcement agency.

7.3. Listing of Forfeited Property. Each Forfeited Property that Contractor is directed to sell must be offered through Multiple Listing Service and have "For Sale" signs on the Forfeited Property within five (5) business days of sale approval, unless another method of sale is approved by PCAO.

7.4. Rentals. Contractor shall lease Forfeited Property (a "**Rented Property**") if directed to do so in writing by the Designated Representative. All leases of Rented Property must be approved in writing by the Designated Representative and executed by the Pima County Director of Procurement

8. Expenditures.

8.1. Approval of Expenditures. Contractor shall not incur any expenditure for any Forfeited Property without the Designated Representatives prior approval, except for emergencies when such expenditures are necessary to protect the Forfeited Property from damage, or to avoid the suspension of services to tenants of Leased Properties as required by Arizona law.

8.2. Reimbursement of Expenditures. Contractor shall be reimbursed for Repairs, utilities, and other approved costs incurred in the management of Forfeited Property. Expenditures shall be detailed and substantiated and, when approved by PCAO, shall be payable monthly.

83. Non-reimbursable Expenses. Contractor shall not be reimbursed for ordinary costs of doing business such as interest expense or business insurance, costs not directly attributable to the management of Forfeited Property, or for normal costs of doing business, such as photographing the Forfeited Property or site visits.

84. Non-commission Disposal of Property. For Forfeited Property that is disposed of by a free or below-market-value conveyance to a specified individual, organization, or government agency, or by abandonment or destruction, Contractor shall receive only its reimbursable expenses and no commission.

9 **Monthly Reports.** Contractor shall have procedures in place to track each Forfeited Property and shall provide the following reports, as indicated, on/or before the tenth (10th) of the month following the reporting month, reflecting the status of all Forfeited Property assigned to Contractor for management, and all Forfeited Property which was disposed of by Contractor within the past twelve (12) months:

9.1. Inventory. The Inventory report shall list all Forfeited Property by address and other identifiers as may be determined by PCAO.

9.2. Sales and Net Proceeds. The Sales Report shall list all Forfeited Property sold by Contractor by property address, sales price, detailed management costs, gross sales proceeds and net sales proceeds.

9.3. Rental Reports. The Rental report shall show all Forfeited Property rented by and under management of Contractor. The Rental report shall list the Forfeited Property address, and the name of the current renter or occupant.

9.4. Forfeited Property Returned to Claimants. The Returned to Claimants report shall show the address, date received and management costs incurred to date and at date of disposal.

9.5. Custom Reports. When requested by PCAO, Contractor shall prepare specialized reports from the available data base as may be needed, including but not limited to, an aging report showing Forfeited Property held for 6-9 months, 9-12 months, 1-2 years, and over 2 years.

EXHIBIT C
TO PROFESSIONAL SERVICES CONTRACT
BETWEEN PIMA COUNTY AND THE HAVINS CO., INC.

1. Condition of Property.

1.1. The purchaser understands that the seller acquired the property by foreclosure, deed-in-lieu of foreclosure, forfeiture, tax sale, right of eminent domain or similar process and consequently, the seller has little or no direct knowledge concerning the condition of the property. As a material part of the consideration to be received by the seller under this agreement as negotiated and agreed to by the purchaser and the seller. **THE PURCHASER ACKNOWLEDGES AND AGREES TO ACCEPT THE PROPERTY IN "AS IS" CONDITION AT THE TIME OF CLOSING, INCLUDING, WITHOUT LIMITATION, ANY HIDDEN DEFECTS OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY, WHETHER KNOWN OR UNKNOWN WHETHER SUCH DEFECTS OR CONDITIONS WERE DISCOVERABLE THROUGH INSPECTION OR NOT.**

1.2. THE PURCHASER ACKNOWLEDGES THAT THE SELLER, ITS AGENTS AND REPRESENTATIVES HAVE NOT MADE AND THE SELLER SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES, IMPLIED OR EXPRESS, ORAL OR WRITTEN IN RESPECT TO:

1.2.1. the physical condition or any other aspect of the property including the structural integrity or the quality or character of materials used in construction of any improvements, availability and quantity or quality of water, stability of the soil, susceptibility to landslide or flooding, sufficiency of drainage, water leaks, water damage, mold or any other matter affecting the stability, integrity, or condition of the property or improvements;

1.2.2. the conformity of the property or the improvements to any zoning, land use or building code requirements or compliance with any laws, rules, ordinances or regulations of any federal, state or local governmental authority, or the granting of any required permits or approvals, if any, of any governmental bodies which had jurisdiction over the construction of the original structure, any improvements and/or any remodeling of the structure; and

1.2.3. the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the property or improvements including defects, apparent, non

apparent or latent, which now exist or which may hereafter exist and which if known to the purchaser, would cause the purchaser to refuse to purchase the property.

1.3. Mold, mildew, spores and/or other microscopic organisms and/or allergens (collectively referred to in this Agreement as "Mold") are environmental conditions that are common in residential properties and may affect the Property. Mold, in some forms, has been reported to be toxic and to cause serious physical injuries, including but not limited to, allergic and/or respiratory reactions or other problems, particularly in persons with immune system problems, young children and/or elderly persons. Mold has also been reported to cause extensive damage to personal and real property. Mold may have been removed or covered in the course of any cleaning or repairing of the Property. The Purchaser acknowledges that, if Seller or any of Seller's employees, contractors, or agents cleaned or repaired the Property or remediated Mold contamination, that Seller does not in any way warrant the cleaning, repairs or remediation. Purchaser accepts full responsibility for all hazards that may result from the presence of Mold in or around the Property. The Purchaser is satisfied with the condition of the Property notwithstanding the past or present existence of Mold in or around the Property and Purchaser has not, in any way, relied upon any representations of Seller, Seller's employees, officers, directors, contractors, or agents concerning the past or present existence of Mold in or around the property.

1.4. In the event the Property is affected by an environmental hazard, as determined by the Seller, either party may terminate this Agreement. In the event the Seller decides to sell the Property to the Purchaser and the Purchaser agrees to purchase the Property, the Purchaser agrees to execute a general release at closing, in a form acceptable to Seller, releasing the Seller from any liability related to the environmental hazard or conditions of the Property. In the event the Purchaser elects not to execute the disclosure and release, at the Seller's discretion, this Agreement is automatically terminated.

1.5. In the event the Seller has received official notice that the Property is in violation of building codes or similar laws or regulations, the Seller may terminate this Agreement or delay the date of closing or the Purchaser may terminate this Agreement. In the event this Agreement is terminated by either Purchaser or Seller pursuant to this Addendum, any earnest money deposit will be returned to the Purchaser. If there is an enforcement proceeding arising from allegations of such violations before an enforcement board, special master, court or similar enforcement body, and neither the Purchaser nor the Seller terminate this Agreement, the Purchaser agrees (a) to accept the Property subject to the violations, (b) to be responsible for compliance with the applicable code and with orders issued in any code enforcement proceeding and (c) to resolve the

deficiencies as soon as possible after the closing. The Purchaser agrees to execute any and all documents necessary or required for closing by any agency with jurisdiction over the Property. The Purchaser further agrees to indemnify the Seller from any and all claims or liability arising from the Purchaser's breach of this Addendum.

1.6. The closing of this sale shall constitute acknowledgement by the Purchaser that Purchaser had the opportunity to retain an independent, qualified professional to inspect the Property and that the condition of the Property is acceptable to the Purchaser. **The Purchaser agrees that the Seller shall have no liability for any claims or losses the Purchaser or the Purchaser's successors or assigns may incur as a result of construction or other defects which may now or hereafter exist with respect to the Property.**

1.7. The Seller is exempt from filing a disclosure statement as the Property was acquired through foreclosure, deed in lieu of foreclosure, forfeiture, tax sale, eminent domain or similar process.

Exhibit D

The Havins Co., Inc.
5175 West Ajo Highway
Tucson, Arizona 85735
Tel. (520) 327-0022
Fax (520) 327-7536

PROPERTY MANAGEMENT AGREEMENT

1. PARTIES: This Property Management Agreement ("Agreement") is entered into between PIMA COUNTY, a body politic and corporate of the State of Arizona (hereinafter called "**Owner**") and THE HAVINS CO., INC., an Arizona corporation (hereinafter called "**Agent**").

2. BACKGROUND AND PURPOSE:

2.1. County and Agent have entered into a Professional Services Contract (the "**Services Contract**") pursuant to which Agent, as Contractor, will provide services in connection with the management and sale of Forfeited Property, as defined in the Services Contract. The term "Services Contract" includes exhibits A, B, and C to the Services Contract.

2.2. County desires that Agent provide property management services for the Property located at the following street address in Pima County, Arizona: (the "**Premises**").

2.3. Agent agrees to provide management services for the Premises in accordance with the terms of the Services Contract and this Agreement. **In the event of a conflict between the terms of this Agreement and the Services Contract, the terms of the Services Contract shall prevail.**

2.4. All defined terms in the Services Contract shall have the same meaning in this Agreement, except as otherwise provided herein.

3. TERM: Owner hereby retains the services of Agent exclusively to rent, lease, operate and manage the **Premises** for a period of () years beginning on the _____ day of _____, 20__ and ending on the _____ day of _____

_____ 20__, provided that in no event shall the term of this Agreement exceed the term of the Services Contract. Either party may terminate this Agreement upon thirty (30) days written notice, or as otherwise provided in the Services Contract.

4. OBLIGATIONS OF AGENT: Agent agrees:

4.1. To use diligence in the management of the Premises for the period and upon the terms herein provided, and agrees to furnish the services of its organization for the renting, leasing, operating and managing of the Premises.

4.2. To render monthly statements receipts, expenses and charges to the following person(s) at the address(es) shown:

NAME

NAME:

PHONE NUMBER:

PHONE NUMBER:

FAX NUMBER:

FAX NUMBER:

5. PROCEEDS TO:

5.1. In the event the disbursements and charges shall be in excess of the receipts, Owner agrees to pay such excess as provided in the Services Contract, and nothing herein contained shall obligate Agent to advance its own funds on behalf of Owner.

5.2. All receipts collected for Owner will be in the form of cash, credit card receipts, personal or cashier's check or money order with Owner named as Payee and will be kept separate from Agent's personal account. All deposits collected for Owner delivered to the Designated Representative.

6. AUTHORITY AND POWERS: Owner hereby gives Agent the following authority and powers and Owner agrees to assume the expense in connection herewith:

6.1. To advertise the availability for rental of the Premises or any part thereof, and to display "For Rent" signs.

6.2. To make or cause to be made and supervise repairs, alterations and/or decorating on Premises, purchase supplies and pay all bills incurred. Agent agrees to secure the prior approval of Owner as provided in the Services Contract.

6.3. To contract for vendor labor and services required for the operation and maintenance on the Premises, it being agreed that all vendor work done on the Premises will be supplied by independent contractors, who are not deemed employees of either Agent or Owner. Agent will receive no payment of any kind from the independent contractors doing work to the Premises. It is understood that Agent will in no way be responsible for payment of any repairs and/or maintenance to the Premises and has acted solely as a facilitator for Owner in this instance.

6.4. To contract for electricity, gas, fuel, telephone, window cleaning, ash or rubbish hauling and other services or such services for the Premises as Agent shall deem advisable.

6.5. Nothing herein shall be construed as a solicitation for a listing if the Premises are currently listed by another broker.

7. INDEMNIFICATION AND EXPENSES.

7.1. Owner agrees to indemnify, defend and save agent harmless from all damage suits in connection with the management of the Premises and/or any liability for damage to the property and/or injuries or death of any employee, tenant or other person whomsoever, except that this indemnity, agreement to defend and hold harmless shall not extend to the fault or negligence of Agent, employees of agent or anyone under Agent's direction or control in connection with the performance of this Agreement.

7.2. Owner shall pay all expenses incurred by Agent and approved as provided in this Services Contract, including, but not limited to, advertising costs.

8. MANAGEMENT FEES: Management fees shall be paid as provided in the Services Contract.

9. FURTHER AGREEMENT:

9.1. Owner expressly withholds from Agent any power or authority to make

any structural changes in any building or to make any other major alterations or additions in or to any building or equipment, except in the event emergency repairs are required because of danger to life or property or which are immediately necessary for the preservation and safety of the tenants and/or occupants or are required to avoid the suspension of a necessary service as set forth in Arizona Statutes.

9.2. Agent does not assume and is given no responsibility for compliance of any building on the Premises or any equipment therein. Agent shall notify Owner promptly of any notices, complaints, warnings or summons received relating to matters concerning requirements of any statute, ordinance, law or regulation of any governmental body or public authority, but Agent does not assume or is given responsibility for compliance to these requirements. Owner shall notify Agent of any knowledge of lead based paint which might be present in the property in compliance with HUD regulations.

9.3. - In the event it's alleged or charged that any building on the Premises or any equipment therein or any act by Owner with respect to the Premises or sale, rental, or other disposition thereof fails to comply with, or is in violation of any of the requirements of any constitutional provision, statute, ordinance, law or regulation of any governmental body or any order ruling of any public authority or official thereof having or claiming to have jurisdiction there over, and Agent, in its sole and absolute discretion, considers that the action or position of Owner or managing agent with respect thereto may result in damage or liability to Agent, Agent shall have the right to cancel this Agreement any time by written notice to Owner of its election to do so, which cancellation shall be effective upon service of such notice. Such notice may be served personally or by certified mail. Such cancellation shall not terminate any liability or obligation of Owner to Agent for any payment, reimbursement, or other sum of money then due and payable to Agent hereunder.

9.4. A final accounts receivable and payable list will be sent to Owner within seventy-five (75) days after termination of the Agreement

9.5. MEDIATION CLAUSE: Owner and Agent agree to mediate any dispute or claim arising out of or relating to this Agreement, any alleged breach of this Agreement or services provided in relation to this Agreement before resorting to court action. All mediation costs will be paid equally by the parties to the Agreement. In any court action, attorney fees shall be awarded to prevailing party.

10. AGENCY VERIFICATION: Agent is, and shall remain the exclusive agent of Owner with respect to the Premises during the term of this Agreement

11. ORIGINATION OF AGREEMENT: The Havins Co., Inc. is a duly licensed real estate brokerage in the State of Arizona. Therefore, it shall be deemed that this document was executed in Arizona.

IN WITNESS WHEREOF, the parties hereto have affixed or caused to be affixed their respective signatures this _____ day of _____, 20__.

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

George Widugiris, Director, Procurement

Date

APPROVED AS TO CONTENT:

David A. Smutzer, Legal Administrator

APPROVED AS TO FORM:

Tobin Rosen, Deputy County Attorney, Civil Division

THE HAVINS CO., INC., an Arizona corporation:

Herbert B. Havins, President

Date