



Contract Number: CT.CD. 14*350
Effective Date: 4-8-14
Term Date: 4-7-16
Cost: \$240,000.00
Revenue: _____
Total: _____ NTE: _____
Action: 1-1-16
Renewal By: _____
Term: 4-7-16
Reviewed by: [Signature]

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: 4/08/2014

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATION

Authorization to sign Contract # CTCD 14*350 between Southern Arizona Land Trust, Inc. and Pima County Community Development and Neighborhood Conservation Department to provide \$240,000.00 in funding for the Corona Road Estates homeownership housing development, expenses covered by 2004 General Obligation Bond Funds.

IMPORTANT: In a Memorandum to the Board of Supervisors dated September 30, 2013 from the Pima County Housing Commission, the commission recommended \$240,000 in bond funding for an affordable housing project to be developed by SALT. The project consists of new construction of 9 single-family homes to be sold to qualified low income households. This recommendation was approved by the Board on October 15, 2013 and included the recommendation that the Board authorize county staff to begin developing and processing a contract.

The construction of this affordable housing project will require more than one year to be completed. SALT's request for funding included a 24 month timeline to complete the development. Our County Housing Commission and housing staff determined the 24 month timeline to be appropriate for the development and therefore the contract was written with a 24 month contract term. The required Multi-Year contract form was submitted and approved by the County Procurement Director.

PR-08-03/19/14 PM 12:52

CONTRACT Number (If applicable): **14*350**

STAFF RECOMMENDATION(S):

Staff recommends approval by Board of Supervisors.

CORPORATE HEADQUARTERS: Tucson, Arizona

Ver. 1
Jendor 1
Pgs. 37
To: COB. 3-26-14
Agenda 4-8-14
(2)

CLERK OF BOARD USE ONLY: BOX M.G.

ITEM NO.

PIMA COUNTY COST: \$240,000.00 REVENUE TO PIMA COUNTY: \$

FUNDING SOURCE: 2004 G.O. Bond Funds

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

	X	YES		NO
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Board of Supervisors District:

1		2	X	3		4		5		All	
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IMPACT:

IF APPROVED:

County shall authorize contract CT-CD 14*350 between Southern Arizona Land Trust, Inc. and Pima County Community Development and Neighborhood Conservation Department for \$240,000.00 in funding for construction of nine single-family homes for low-income homebuyers at the Corona Road Estates housing development.

IF DENIED:

County shall not authorize contract CT-CD 14*350 between Southern Arizona Land Trust, Inc. and Pima County Community Development and Neighborhood Conservation Department, and as result \$240,000.00 in funding *will not* be available for construction of nine single-family homes for low-income homebuyers at the Corona Road Estates housing development..

DEPARTMENT NAME: Community Development and Neighborhood Conservation Dept.

CONTACT: Marcos Ysmael TELEPHONE NO.: 624-2947

PIMA COUNTY DEPT. OF: COMMUNITY DEVELOPMENT AND NEIGHBORHOOD CONSERVATION		<table border="1"> <tr> <td align="center">CONTRACT</td> </tr> <tr> <td>NO. <u>CT-CD-14000000000000000350</u></td> </tr> <tr> <td>AMENDMENT NO. _____</td> </tr> <tr> <td><small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small></td> </tr> </table>	CONTRACT	NO. <u>CT-CD-14000000000000000350</u>	AMENDMENT NO. _____	<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>
CONTRACT						
NO. <u>CT-CD-14000000000000000350</u>						
AMENDMENT NO. _____						
<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>						
PROJECT NAME:	CORONA ROAD ESTATES					
CONTRACTOR:	SOUTHERN ARIZONA LAND TRUST, INC.					
FUNDING:	2004 GENERAL OBLIGATION BOND FUNDS					
AMOUNT:	\$240,000.00					
DISTRICT NO.: FIVE (5)						
TERM: See body of Contract						

GENERAL OBLIGATION HOUSING BOND FUND CONTRACT

THIS CONTRACT ("Contract") is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and Southern Arizona Land Trust, Inc., an Arizona non-profit corporation ("Contractor" or "the Land Trust" or "SALT").

RECITALS

- A. County is authorized, under A.R.S. §§ 11-251.10 and 11-381, to provide funding for housing projects that are affordable to persons of low income.
- B. In an election held on May 18, 2004 (2004 Special Bond Election), Pima County voters authorized the sale of bonds and use of proceeds for, inter alia, acquiring, developing, expanding, improving and equipping new and existing facilities to further the health, education, welfare and safety of the citizens of the County, including, without limitation, housing and other improvements and facilities to further neighborhood reinvestment.
- C. In compliance with Pima County Code Chapter 3.06, titled Bonding Disclosure, Accountability and Implementation, the Board of Supervisors adopted Ordinance No. 2004-18, The Bond Implementation Plan For The May 18, 2004 Special Election (the "Bond Ordinance").
- D. The Bond Ordinance (Section VII (B) (1) (c) (2.10)) allocates \$10,000,000.00 in bond proceeds to be issued for investment in projects that expand home ownership opportunities and provide access to affordable housing for low-income residents of Pima County.
- E. Pima County Community Development and Neighborhood Conservation Department, in conjunction with the Pima County Housing Commission, solicited applications and

conducted an evaluation process to select innovative projects involving the construction, rehabilitation, or preservation of housing that is affordable to low-income households meeting U.S. Department of Housing and Urban Development ("HUD") Income guidelines.

- F. Established in 2008, SALT is a 501(c)(3) non-profit organization, and a 509(a)(3) support organization of the Industrial Development Authority of the County of Pima, who's mission includes the provision of affordable housing for low-income households.
- G. SALT submitted an application to County for \$240,000.00 of bond proceeds for the construction of nine (9) single family homes (collectively "the Homes") on nine parcels (collectively "the SALT Parcels") owned by the Land Trust located at the Corona Road Estates Subdivision. When completed, the Homes will be sold to low-income individuals or families pursuant to the conditions of this Contract.
- H. The SALT Parcels are suitable for construction of the Homes and are legally described as follows:

Lots 3, 8, 9, 11, 16, 17, 18, 19 and 20 of Corona Road Estates, according to the plat of record in the Office of the County Recorder of Pima County, Arizona, recorded in Book 61 of Maps and Plats at Page 38.
- H. The Pima County Housing Commission recommended that the Pima County Board of Supervisors award \$240,000.00 to SALT for the construction of the Homes.
- I. On October 15, 2013, the Pima County Board of Supervisors determined that the proposed construction and sale of the Homes to low-income homebuyers would meet the goals and purposes of the Bond Ordinance and be in the best interests of County and approved an allocation of 2004 General Obligation Bonds in an amount not to exceed \$240,000.00 for the construction of the Homes.
- J. Projects constructed in whole or in part with bond proceeds are subject to the guidelines for bonding disclosure, accountability and implementation of County bond projects contained in Pima County Code Chapter 3.06 and in the Bond Ordinance.

NOW, THEREFORE, County and Contractor, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

ARTICLE I - TERM AND EXTENSION/RENEWAL

- A. This Contract shall commence on April 8, 2014, and shall terminate on April 7, 2016, unless sooner terminated or extended pursuant to the terms set forth herein. This Contract may be extended at the sole discretion of the County, and only for good cause.
- B. Any modification, amendment or extension shall be made by a formal written amendment executed by the parties hereto pursuant to County General Obligation Neighborhood Reinvestment and Affordable Housing Bond Program Substantial Change Process as provided in Exhibit A.

- C. Expiration of this Contract will not affect the liabilities of the parties incurred prior to such expiration, nor will it affect the terms of this Contract that, by their express terms or by clear implication, are intended to survive such expiration.

ARTICLE II – SCOPE

- A. In consideration for the bond proceeds provided under this Contract, SALT agrees to construct nine (9) single family homes pursuant to the terms and conditions set forth in the attached Exhibit B – Scope of Work.
- B. SALT warrants that it has:
1. The financial resources necessary to construct, market and sell nine single family homes to low-income homebuyers (individuals or families with household incomes at or below 80% Area Median Income (80% AMI) according to the terms of this Contract;
 2. The financial resources necessary to pay all costs for the work to be performed pursuant to this Contract in advance of requesting reimbursement from County;
 3. Provided County with a complete and accurate Affirmative Marketing Plan which demonstrates a concerted effort to reach out to qualified low-income households not likely to seek homeownership opportunities; and
 4. Disclosed to County all identities of interest and all sources of financing and subsidy.
- C. SALT shall comply with the following:
1. Section 3. All activities performed under this Contract, must comply with the terms and conditions of HUD Section 3, 24 CFR 135, as if the funds provided by County were HUD funds.
 2. Submit Monthly Invoices to County. Each invoice must be accompanied by supporting documentation that substantiates the cost of construction for each of the Homes.
 3. Construction Documentation. Upon request of County's Project Manager, provide title reports, appraisal reports, construction contracts and other documents or information reasonably related to the work performed under this Contract.
 4. Legal claims. SALT shall afford County the opportunity to review and comment on all legal claims prior to resolution thereof.
 5. Signage. County shall have the right to install signage at each construction site in a location of its choosing, provided that the sign does not interfere with the construction and conforms to any applicable City of Tucson sign regulations. A sign will announce that the project is funded by County bond proceeds and list the names of the members of the Board of Supervisors.
 6. Recognition. SALT shall acknowledge the County's contribution to the projects at any public participation event in a form approved by County. Examples of acceptable forms of recognition include, but are not limited to: signs, permanent plaques, County participation in and /or acknowledgment at opening ceremonies and press releases.

- D. **This Article shall survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.**

ARTICLE III – FINANCE AND PAYMENT

- A. County shall reimburse SALT for the actual costs incurred by SALT only for the vertical construction of the Homes in an amount not-to-exceed **\$240,000.00**.
- B. **No payment will be made by County until the following requirements have been met:**
1. **Execution of Lien.** The Performance Deed of Trust attached hereto as Exhibit C must be executed and recorded in the Office of the Pima County Recorder.
 2. **Reimbursement Schedule.** SALT shall, within thirty (30) days after final execution of this Contract, submit to County a preliminary reimbursement schedule showing the anticipated dates and amounts of requests from the SALT for reimbursement of project expenses incurred and paid by the SALT. A Final Reimbursement Schedule shall be established and submitted at least fifteen (15) days prior to the start of construction.
 3. **Proof of Insurance.** SALT shall have furnished to County proof that it has in place all the insurance policies required by Article IV.
 4. **Mortgage Policy.** If requested by County, issuance of a lender's policy of title insurance insuring the County's lien is valid and superior to all monetary liens and encumbrances on each of the Homes other than the Construction Deeds of Trust and such other non-monetary encumbrances as are reasonably acceptable to County. County will, if it requests this insurance, pay the premium for it but the cost of the premium shall be deducted from the Maximum Allocated Amount.
- C. **Request for Payment.** Within ten (10) business days of the end of each month, starting on the date indicated in the Final Reimbursement Schedule, SALT shall submit a "Request for Payment" form with invoice(s) and supporting documentation which must be signed by SALT acknowledging the provision of the invoiced products or services for which reimbursement is sought. County's Project Manager will perform inspections to ensure that the work has been completed prior to approving and releasing any payments to SALT.
- D. **Withholding of Reimbursement.** Notwithstanding any other provision herein, no reimbursement will be made for any Request for Payment until County is satisfied that the work for which the Request for Payment was submitted has been done satisfactorily, the general contractors and subcontractors have been paid (less any retention held by SALT), and the amounts requested have been verified and are in compliance with the budget provided pursuant to Exhibit B, Article I, Subparagraph C(1)(a)(i). Failure to pay the general contractor or any subcontractors for work contracted and performed may, in County's sole discretion, result in the withholding of future reimbursements from the SALT and direct payment by County to the unpaid general contractor or subcontractor.

- E. County Review. If County disapproves of the Request for Payment, the County shall notify SALT of this disapproval, and the reasons for it (orally or in writing) within ten (10) business days of receipt of the Request for Payment and supporting documentation from SALT. If the County does not object to the Request for Payment, it shall pay the same within thirty (30) business days of receipt.
- F. Monthly Progress Reports. Within ten (10) business days of the end of each month, SALT shall submit a Monthly Progress Report ("Progress Report") in the format set forth in Exhibit E. **A Progress Report must be submitted regardless of whether SALT is seeking reimbursement for the preceding month.**
- G. Submittal of Requests for Payments and Reports. All Requests for Payment and Progress Reports shall be submitted to:

Affordable Housing Program Manager
Pima County Community Development & Neighborhood Conservation Dept.
Pima County Housing Center
801 West Congress Street
Tucson, Arizona 85745

- H. Delays. SALT shall promptly notify the County at any time that SALT becomes aware of a potential delay that may cause a deviation from the Final Reimbursement Schedule and/or the Final Construction Schedule. In the event of any deviation from the Final Reimbursement Schedule, County and SALT shall revise the Final Reimbursement Schedule, consistent with Federal Treasury Regulations.

- I. Final Payment. Final Payments will be disbursed as follows:

1. 2.5% of the Allocated Maximum Amount (\$6,000.00) will be withheld and disbursed upon receipt of the Certificates of Occupancy for the final (or ninth) housing unit completed in the Project. This withholding requirement can be modified or waived at the sole discretion of the County should it determine that Contractor has performed to its satisfaction as evidenced by timely completion and sale the first five homes.
2. An additional 2.5% of the Allocated Maximum Amount (\$6,000.00) will be withheld and disbursed upon receipt of the Final Report & Accounting described in paragraph J below.

- J. Final Report & Accounting. Within ninety (90) days after completion of all nine homes and upon acceptance of the project by County, SALT shall submit to County:

1. A final report describing the work on each of the Homes as constructed and summarizing the history (*i.e.*, who designed, constructed, provided public art (if applicable), funding sources, description of public participation, purpose and public benefit of the Project, etc.), along with photographs and final as built drawings; and,
2. A detailed final accounting statement of the funds expended on the Homes, along with a final Request for Payment, if needed. **Failure to provide this information within the established time period may result in denial of reimbursement.**

- K. Final Review. In the event County discovers that some funds were paid to SALT by County to reimburse expenses that did not in fact occur or that were not for the construction of the Homes, SALT shall promptly repay such amounts to County with interest at the rate of 10% per annum from the time paid by County until repaid to County by SALT.
- L. Amendment of the Bond Ordinance. SALT shall notify the County of any event that would require an amendment of the Bond Ordinance, and shall formally request the County Board of Supervisors to hold a public hearing on the requested amendment. The parties shall follow the procedures for amendment of the Bond Ordinance set forth in Chapter 3.06 of the Pima County Code, as it may be amended or renumbered from time to time, and relevant sections of the Bond Ordinance. In the event the Board of Supervisors does not approve SALT's request for a Bond Ordinance amendment, the SALT shall complete the Project as defined by the Bond Ordinance and this Contract.
- M. Federal Treasury Regulations. SALT acknowledges that Pima County manages the expenditures of bond proceeds in order to qualify for a spending exception to the arbitrage rebate requirements of Sections 148 through 150 of the Internal Revenue Code of 1986 and the related regulations found in 26 CFR Part 1, §§ 1.148 through 1.150 as may be modified from time to time (such statutes and regulations hereinafter referred to as the "Tax Exempt Bond Rules"). SALT acknowledges that arbitrage rebate is affected by both the use of bond proceeds and by the timing of bond-related expenditures. Notwithstanding any other provision of this Contract, County may, in County's sole discretion, either:
1. Reallocate Project funds to other projects funded with County bonds (which may, in some circumstances, result in a delay in payments under this Contract), or
 2. Terminate this Contract as set forth in Article XVI below if the County, in its sole discretion, determines that such reallocation or termination is necessary or advantageous to the County under the Tax Exempt Bond Rules in order to:
 - a. Qualify for a spending exception to the arbitrage rebate requirements;
 - b. Reduce the amount of any potential arbitrage rebate or penalty; or
 - c. Manage the County's bond proceeds.

ARTICLE IV - INSURANCE AND BONDING REQUIREMENTS

- A. Pima County in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, his agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.
- B. Minimum Scope and Limits of Insurance: Contractor shall provide coverage with limits of liability not less than those stated below.
- A. Commercial General Liability – Occurrence Form
1. Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

2. The policy shall be endorsed to include the following additional insured language:
"Pima County is named an additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor."
3. Policy shall contain a waiver of subrogation against Pima County, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

1. Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract:

Combined Single Limit (CSL)	\$1,000,000.00
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2. The policy shall be endorsed to include the following additional insured language: **"Pima County is named an additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor."**
3. Policy shall contain a waiver of subrogation against Pima County, its departments, agencies, boards, commissions and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

1. Workers' Compensation Statutory amount
2. Employer's Liability:
 - a. Each Accident \$ 500,000.00
 - b. Disease – Each employee \$ 500,000.00
 - c. Disease – Policy Limit \$1,000.00.00
3. Policy shall contain a waiver of subrogation against Pima County, its departments, agencies, boards, commissions and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
4. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

- C. Additional Insurance Requirements: The policies shall contain, or be endorsed to contain, the following provisions:
- A. Pima County, wherever additional insured status is required, shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Agreement.
 - B. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
 - C. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- D. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Pima County. Such notice shall be sent directly to the, **Margaret Kish, Director, Community Development and Neighborhood Conservation Department, 2797 E. Ajo Way, Tucson, AZ 85713** and shall be sent by certified mail, return receipt requested. The Project Name/Contract Number and project description shall be noted on the Certificate of Insurance.
- E. Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A-VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency. All Certificates of Insurance are to be received and approved by Pima County before work commences.
- F. When construction work begins, Contractor shall obtain Builder's Risk Insurance in an amount equal to the outstanding amount of the contractual obligations entered into with respect to the Homes, with coverage written on an all risk, replacement cost basis and including coverage for soft costs, flood and earth movement.

ARTICLE V – INDEMNIFICATION

- A. 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.
- B. Preexisting Conditions. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold County, its boards, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by the Contractor prior to the execution of this Contract.

- C. Notice. Each party shall notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section.
- D. **This Article shall survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.**

ARTICLE VI - COMPLIANCE WITH LAWS

- A. 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.
- B. Compliance with Bond Requirements. Contractor agrees to comply with all applicable provisions of Pima County Code Chapter 3.06, "Bonding Disclosure, Accountability, and Implementation" and of the Bond Ordinance, as they now exist or may hereafter be amended. Any reports to be submitted by Contractor to County in compliance with Pima County Code Chapter 3.06 or the Bond Ordinance shall be provided in a format and schedule determined by County.
- C. For each sale of County bonds, the County issues a Tax Certificate and Contract in compliance with Section 1.148 through 1.150 of the Federal Treasury Regulations specifying the uses, investments and disbursement of Bond proceeds. In the event County determines that a violation of Federal Treasury Regulations is likely to occur or County is notified by the Contractor of a potential delay in the project that will result in a delay in the expenditure of the County bond funds designated for this project, County may reallocate those funds to other projects. County will resume reimbursement payments when bond funds become available again.

ARTICLE VII - INDEPENDENT CONTRACTOR

The status of Contractor shall be that of an independent contractor. Neither Contractor, nor any of Contractor's officers, 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.

ARTICLE VIII - 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.

ARTICLE IX - 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, provided that such approval shall not be unreasonably withheld.

ARTICLE X - 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

These orders are 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.

ARTICLE XI - AMERICANS WITH DISABILITIES ACT

- A. Contractor shall comply with 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.
- B. If Contractor is carrying out a government program or service on behalf of County, then Contractor shall maintain accessibility to the program to the same extent and degree that would be required of County under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Contract.

ARTICLE XII - 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.

ARTICLE XIII - MONITORING AND EVALUATION

- A. County may inspect any portion of the Project construction for substantial compliance with drawings and specifications and applicable building code and standard provisions. Contractor shall allow official County representatives reasonable access to the Project site during construction. The Project Manager and County Liaison will cooperate and consult with each other during Project construction.
- B. County shall have the right to monitor all activities and information sources in the management, fiscal and service systems of Contractor and any subcontracted parties, relating to performance of duties and obligations under this Contract, to assure that Contractor is maintaining adequate and acceptable progress and systems, and to ensure that the funds provided to Contractor by County are being used effectively and efficiently to accomplish the purposes for which the funds were made available. County shall have the right to review all contracts between Contractor and any subcontractors hired for the project. Contractor shall be responsible for delivering a copy of all contracts to the assigned Pima County Project Manager.

ARTICLE XIV - 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.

ARTICLE XV - CANCELLATION FOR CONFLICT OF INTEREST

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

ARTICLE XVI - TERMINATION

- A. Termination without Cause. 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, County's only obligation to Contractor shall be payment for services rendered prior to the date of termination.
- B. Termination for Cause. This Contract may be terminated at any time without advance notice and without further obligation to County when Contractor is found by County to be in default of any provision of this Contract.
- C. Arbitrage Rebate Requirements. County reserves the right to cease payments to Contractor and unilaterally terminate this Contract if County determines, in County's sole discretion, that any action or inaction on the part of Contractor is likely to occur that would adversely

affect the election made by the County under the Tax Exempt Bond Rules relating to exceptions for arbitrage rebate.

- D. Non-appropriation. 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.
- E. Immediate Suspension. County may suspend operations and payments under this Contract immediately for violation of contractual requirements, unsafe working conditions, violation of Federal or State law, or lack of reasonable progress in accomplishing objectives and schedules contained in this Contract. In the event of such suspension, Contractor shall assist County by providing information and documents to evaluate the status of the Contract and whether it should be continued.
- F. Temporary Suspension. County may temporarily suspend operations and payments under this Contract immediately at any time if the Board of Supervisors or Administration determines that it is in the County's best interest to suspend this Contract. In the event of such suspension, Contractor shall assist County by providing information and documents to evaluate the status of the Contract and whether it should be continued.
- G. Effect of Termination. Any termination of this Contract shall not relieve any party from liabilities or costs already incurred under this Contract, nor affect any ownership of the Project constructed pursuant to this Contract.

ARTICLE XVII – NO THIRD PARTY BENEFICIARIES

Nothing in this Contract is intended to create any duty or obligation to, or rights in, any person or entity that is not a party to this Contract, including the subsequent Homeowners Association or the Community Group as applicable. Furthermore, this Contract is not intended to affect the legal liability of any party to this Contract by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

ARTICLE XVIII – 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:

County:

Margaret Kish, Director
Pima County Community Development
and Neighborhood Conservation Department
2797 East Ajo Way, 3rd Floor
Tucson AZ 85713

Contractor:

Bob Schwartz, CEO
Southern Arizona Land Trust, Inc.
1700 E. Fort Lowell Road, #102
Tucson, AZ 85719

ARTICLE XIX - NON-EXCLUSIVE CONTRACT

Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

ARTICLE XX - OTHER DOCUMENTS

Contractor and County in entering into this Contract have relied upon information provided in the Pima County General Obligation Housing Bond Fund Solicitation issued on May 28, 2013, and on information provided in Contractor's application, dated July 5, 2013, in response to said solicitation and the drawings and specifications submitted therein. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein to the extent not inconsistent with the provisions of this Contract.

ARTICLE XXI - REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE XXII - SEVERABILITY

If any provision of this Contract, or any application thereof, to the parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Contract which can be given effect, without the invalid provision or application and to this end the provisions of this Contract are declared to be severable.

ARTICLE XXIII - BOOKS AND RECORDS

- A. Contractor shall keep and maintain proper and complete books, records and accounts of the Project. For bond purposes, the Project books and records must continue to be maintained for a period of three (3) years after final payment of the bonds issued for the Project, or, if later, until any related pending proceeding or litigation has been closed. The bonds funding the Project are expected to be fully paid by June 30, 2032, but may be subject to refunding. Contractor shall have the option of either (i) maintaining the Project books and records for the requisite number of years or (ii) conveying the Project books and records to County any time after the Project is completed. The books, records and accounts of the Project shall be available for inspection and audit by duly authorized representatives of County at all reasonable times during the period in which said books, records and accounts are maintained by the Contractor. Unless Contractor conveys all Project books, records and accounts to County, Contractor shall indemnify and hold the County harmless from and against any amount required to be paid to the Internal Revenue Service or any governmental City or agency arising out of the failure by Contractor to maintain such records.
- B. Inspection and Audit. The County may perform an inspection of the Project or an audit of Contractor's books and records at any time in order to verify that monies spent on the Project were expended in accordance with the terms of this Contract.

ARTICLE XXIV – PUBLIC INFORMATION

- A. Pursuant to A.R.S. § 39-121 *et seq.*, and A.R.S. § 34-603(G) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.
- B. Any records submitted in response to this solicitation that respondent believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by respondent prior to the close of the solicitation.
- C. Notwithstanding the above provisions, 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 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 paragraph, 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.
- D. 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.

ARTICLE XXV – LEGAL ARIZONA WORKERS ACT

- 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, 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 Article by including a provision in each subcontract substantially in the following form:

"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 paragraph 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."

- E. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Contractor shall be entitled to an extension of time, but not costs.

ARTICLE XXVI – ELIGIBILITY FOR PUBLIC BENEFITS

Contractor shall comply with the provisions of A.R.S. §§1-501 and 1-502 regarding public benefits, which are hereby incorporated as provisions of this Contract to the extent such provisions are applicable.

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ARTICLE XXVIII- ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this Contract on the date written below.

PIMA COUNTY:

CONTRACTOR:

Chairman, Board of Supervisors Date

Bob Schwartz 03-18-2014
Authorized Signature Date

Print Name and Title:

ATTEST:

BOB SCHWARTZ, CEO

Clerk of the Board Date

APPROVED AS TO CONTENT:

Margaret M. Kish 03/06/2014
Margaret Kish, Director, Date
Community Development and Neighborhood Conservation Department

APPROVED AS TO FORM:

Karen S. Friar 3-4-14
Karen S. Friar, Date
Deputy County Attorney

REVIEWED BY:

Tom Sailer 3-13-14
Director, Finance Department Date

Exhibit A

PIMA COUNTY GENERAL OBLIGATION NEIGHBORHOOD REINVESTMENT AND AFFORDABLE HOUSING BOND PROGRAM SUBSTANTIAL CHANGE PROCESS

BACKGROUND:

Pima County funds various Neighborhood Reinvestment and Affordable Housing Program projects with Pima County General Obligation Bond funds ("bond funds"). In order to receive funding, interested parties submit proposals or applications to either the Neighborhood Reinvestment Oversight Committee or the County Housing Commission ("recommending body").

The Pima County Board of Supervisors ("Board") reviews the recommendations and determines whether or not a particular project may be funded. Funding is awarded through the execution of a contract or intergovernmental agreement with the appropriate party or jurisdiction. Until such document is properly executed, no bond funds are committed to any particular project. Once a legally binding document is executed, County staff will manage the project to assure contractual compliance.

PURPOSE:

The contract or intergovernmental agreement sets forth the scope and design of the project. Allowances are made within the document for minor changes. However, at times, the contractor seeks to make a *substantial change* to the scope and design set forth either in the original proposal or application or in the executed document. The following procedures are established to direct the process for the approval of a *substantial change* to a project funded (or seeking funding) by Pima County General Obligation Bond monies.

PROCESS:

Once a project is approved by the recommending body, there are three points at which a *substantial change* might be requested: (1) prior to initial approval by the Board; (2) after Board approval, but before the execution of a legally binding document; or, (3) after the execution of a contract or intergovernmental agreement.

- 1) Prior to initial approval by the Board or after Board approval, but before the execution of a legally binding document.
 - a) The party or jurisdiction seeking bond funds, contacts Pima County Community Development & Neighborhood Conservation (CDNC) program manager regarding the requested change.
 - b) CDNC staff will determine if it is necessary to review documentation and, if so, what documentation the contractor or jurisdiction must provide for the review.
 - c) CDNC staff reviews the change and determines if the requested change is, in fact,

substantial and if it is necessary to present the request to the recommending body.

- d) The recommending body may ask the requesting party to:
 - i) Make a formal presentation regarding the specific changes to the recommending body at a public meeting;
 - ii) Submit a written revision to the original proposal; or
 - iii) Submit a new proposal.
- e) After review, the recommending body may choose to:
 - i) Recommend that the Board approve the project for funding as revised; or,
 - ii) Revoke the original recommendation for funding.

2) After the execution of a legally binding document

- a) The party or jurisdiction seeking bond funds, contacts Pima County Community Development & Neighborhood Conservation (CDNC) director regarding the requested change.
- b) CDNC staff will determine what documentation contractor or jurisdiction must provide for review.
- c) CDNC staff reviews the change, assesses the impact of the proposed change and, if necessary, discusses the proposed change with the Pima County Attorney's Office.
- d) CDNC staff will discuss the proposed change with the recommending body.
- e) After review, the recommending body may choose to:
 - i) Recommend that the Board of Supervisors (Board) approve the amended project for funding;
 - ii) Recommend that the Board not approve the amended project and continue to enforce the terms set forth in the initial contract or the IGA; or,
 - iii) Recommend that the Board consider termination of the contract or IGA, as allowed under the terms of the contract or IGA.
- f) If necessary, CDNC staff will prepare an amendment to the contract or IGA or the required termination documentation for the Board.
- g) The Board, in its sole discretion, may accept and execute the amendment or proceed with the termination of the contract or IGA.

3) Program authority.

The CDNC program manager or department director is charged with reviewing any of the changes proposed by the contractor or the jurisdiction to determine if the proposed changes are a significant deviation from the original approved proposal. In the event that the program manager or department director believe that the changes rise to the level of *substantial change* the process described in this document will be implemented.

- 4) Substantial changes. A *substantial change* includes, but is not limited to, any change in project concept, design or scope that would, by itself, or in combination with other

factors do any of the following:

- a) Result in a significant escalation in project cost. This includes either a change in the amount of bond funding sought or a change in other funds dedicated to the project from other sources.
- b) Impact or revise the stated intent of the original proposal or application.
- c) Alter the number or type of specific units or amenities.
- d) Alter the construction schedule in such a manner that will delay the completion of the project.
- e) Alter the construction schedule in such a manner that will change the bond funding schedules.
- f) Result in non-compliance with the bond ordinance.
- g) Result in non-compliance with any federal or state law or regulation.

END OF EXHIBIT A

Exhibit "B"

SCOPE OF WORK

I. **Scope.**

A. Ownership: SALT warrants that:

1. SALT holds clear title to the nine (9) parcels described in Attachment B-1 below (collectively "the Parcels"); and
2. The Parcels are located within walking or cycling distance of schools, parks and public transportation.

B. Construction of single-family homes. Following the specifications and model plans set forth in the SALT Corona Road Estates application, dated 7/3/2013 (incorporated herein by reference as if included in this Contract), SALT shall construct the Homes, each of which shall have the features listed below. Reasonable modifications of the features requirements may, in County's sole discretion, be approved by the Community Development and Neighborhood Conservation Department Director or designee.

1. Approximately 1200 to 1300 square feet living space (exact square footage may vary based on lot size);
2. Living room;
3. Fully equipped kitchen;
4. New ENERGY STAR* certified appliances
5. ENERGY STAR* certified lighting package;
6. ENERGY STAR* certified dual pane windows;
7. WaterSense® rated plumbing fixtures and toilets;
8. Low VOC (Volatile Organic Compound) paints and caulk;
9. Three (3) or Four (4) bedrooms;
10. Two (2) bathrooms;
11. Two car garage; and
12. Low water use trees that provide shade.

** ENERGY STAR is the U.S. Environmental Protection Agency's (EPA) voluntary program that helps businesses and individuals save money and protect the climate through superior energy efficiency, established by the EPA in 1992 under the authority of the Clean Air Act Section 103(g).*

C. SALT's responsibilities include, but are not limited to:

1. Prior to beginning construction on each home, SALT shall:
 - a. Provide County with the following information for review and approval:

- i. **Budget** including, but not limited to: ledger statement for the specific property that details costs, sources of funding, use of funds committed to the specific home and financing that will be provided to the buyer by SALT; and
- ii. **Plans and specifications** for the construction of the homes. Construction of the Homes must comply with all applicable zoning and building codes and each home will be constructed to qualify for a bronze certification under the Southern Arizona Regional Residential Green Building Rating System Version 3, or most recent version administered by the City of Tucson Green Building Program.

No funds will be paid to contractor unless and until this information is received by County.

- b. Receive written approval from County to proceed with construction pursuant to the budget and plans, as may be amended by the Parties after County review.
2. Utilize a competitive bid process to select local contractors and subcontractors to perform the construction work.
 3. Obtain all necessary local building and other required permits.
 4. Provide construction management of all aspects of the construction of each home through completion and until each home is sold and occupied or secured, whichever is sooner.
 5. Ensure that a Project Manager is assigned to the construction of each home to coordinate with the County's designated project manager throughout construction and until each home is sold and occupied or secured, whichever is sooner.
 6. Complete the construction of each home, ensuring that finished work meets State of Arizona workmanship standards established and maintained by the Arizona Registrar of Contractors, HUD Housing Quality Standards and the details set forth in the SALT Corona Road Estates application dated 7/5/2013.
 7. Throughout the construction and until sale, secure the Homes to prevent breaking and entering, theft, vandalism or other damage.
- D. Sale. Each of the Homes will be sold pursuant to the terms and conditions set forth below:
1. Sale of the Homes must be to low-income individuals or families with household incomes at or below 80% AMI, as described in the HUD income guidelines in effect at the time of sale (*see Attachment B-2* for current guidelines). Contractor shall:
 - a. Determine the income eligibility of each homebuyer prior to executing a sales agreement; and
 - b. Retain documentation of homebuyer eligibility.

2. All homes will be sold pursuant to the conditions set forth in the Performance Deed of Trust attached to this Contract as Exhibit C. **This Deed of Trust must be executed and recorded in the office of the Pima County Recorder prior to any payments being made under this Contract.**
 3. **Sales price of each home shall not exceed the appraised value for the home.**
 4. In addition to Pima County underwriting guidelines, underwriting guidelines for any other federal, state or local funding sources must be followed for homebuyers purchasing homes.
 5. Prior to closing on the sale of each home:
 - a. Assure that the homebuyer and adult members of the buyer's household attend and successfully complete either a HUD or NeighborWorksAmerica Certified Homebuyers Education Program; and
 - b. Assure that the homebuyer and adult members of the buyer's household attend an orientation provided by SALT explaining the Pima County Affordable Housing Restriction and Lien Agreement (*see* Exhibit D).
 6. SALT may provide cash assistance, if available from other funding sources. **No County funds provided pursuant to this Contract shall be used to supplement the down payment amount required of buyer.**
- E. Marketing. In order to ensure that low-income households are aware of the availability of the Homes to be sold pursuant to the terms of this Contract, SALT shall, in addition to the activities set forth in the marketing plan provided to County pursuant to Article II of the Contract:
1. Participate in public events that promote affordable housing projects;
 2. Conduct direct marketing activities structured to meet the low-income home buyer; and
 3. Advertise on Pima County's Housing Search website.
- F. Affordability. **This Paragraph F shall survive the termination of this contract and remain in effect for a period of 30 years after the date of first sale of the last of the Homes to be sold.**
1. Monthly housing costs including principal, interest, taxes and insurance ("PITI") shall not exceed one-third of the household's gross household income.
 2. Each of the Homes shall remain affordable to households with household incomes at or below 80% AMI for a total of at least **30 years from the date of sale to the first buyer** ("Affordability Period"), through the use of a regulatory agreement. Such regulatory agreement shall:

- a. Be in the form of the Pima County Affordable Housing Restriction and Lien Agreement attached to this Contract as Exhibit D, unless a different form of regulatory agreement is approved, in writing, by County;
 - b. Be in the amount of the funds provided under this Contract for the specific home being purchased; and.
 - c. Be executed at closing and recorded in the Office of the Pima County Recorder.
3. Failure of SALT to execute and record the 30-year affordability agreement with the initial homebuyer of each of the Homes under the terms set forth above, for whatever reason, shall be considered an act of default. Such default shall be deemed to occur on the date of closing of escrow to a purchaser that does not meet the income requirement set forth in Subparagraph D(2) above. In the event of such default on any home assisted with funds provided pursuant to this Contract, SALT shall remit to County 1/9 of the funds provided (\$26,666.66), together with interest from the date of expenditure to the date paid, at the rate of 8% per annum. Payment must be made no later than sixty (60) days after date default occurs.

4.

II. Timeline: SALT shall:

- A. Commence construction of the first Home(s) within 90 days of Contract approval by the Pima County Board of Supervisors. All nine homes should be constructed and sold within 24 months of Contract approval. Failure to complete the construction or sale of any of the Homes within this timeline, without an amendment to the contract to extend the time, shall be considered a default and contract shall be subject to termination.
- B. Begin to market each of the Homes as soon as deemed appropriate during the construction, but no later than immediately after completion.

III. Budget: County shall reimburse Contractor for vertical construction work on each of the nine Homes. It is anticipated that total cost to construct each of the Homes will be approximately \$130,000.00. County contribution for all nine of the Homes shall not exceed a cumulative total of \$240,000.00.

IV. Staffing. Throughout the term of this Agreement and for the period of affordability defined in Paragraph I(F) above:

- A. SALT shall employ suitably trained and skilled professional personnel to perform all services under this Contract.
- B. SALT shall maintain sufficient staff on payroll to monitor and administer all aspects of this Contract.

V. The Homes. The parcels described in Attachment B-1 shall be developed with new single family homes to be constructed and sold pursuant to the terms of this Contract.

ATTACHMENTS: B-1: Parcel descriptions
B-2: HUD Income Limits for Pima County

END EXHIBIT B

Property: Corona Road Estates	Parcel Number	2010 Census Tract
Lot 3 - 7126 S. Corona Place	138213670	003705
Lot 8 - 7166 S. Corona Place	138213720	003705
Lot 9 - 7174 S. Corona Place	138213730	003705
Lot 11 - 7183 S. Corona Place	138213750	003705
Lot 16 - 7143 S. Corona Place	138213800	003705
Lot 17 - 7135 S. Corona Place	138213810	003705
Lot 18 - 7127 S. Corona Place	138213820	003705
Lot 19 - 7119 S. Corona Place	138213830	003705
Lot 20 - 7111 S. Corona Place	138213840	003705

Property Legal Description :

Lots 3, 8, 9, 11, 16, 17, 18, 19 and 20 of Corona Road Estates, according to the plat of record in the Office of the County Recorder of Pima County, Arizona, recorded in Book 61 of Maps and Plats at Page 38.

**HUD INCOME LIMITS FOR PIMA COUNTY ARIZONA
EFFECTIVE MARCH 15, 2013**

**2013
HOME PROGRAM INCOME LIMITS
TUCSON / PIMA COUNTY**

(EFFECTIVE 3/15/2013)

NUMBER OF PERSONS	EQUAL TO OR LESS THAN 80% OF MEDIAN INCOME	EQUAL TO OR LESS THAN 60% OF MEDIAN INCOME	EQUAL TO OR LESS THAN 50% OF MEDIAN INCOME
1 Person family	\$33,550	\$25,200	\$21,000
2 Person family	\$38,350	\$28,800	\$24,000
3 Person family	\$43,150	\$32,400	\$27,000
4 Person family	\$47,900	\$35,940	\$29,950
5 Person family	\$51,750	\$38,820	\$32,350
6 Person family	\$55,600	\$41,700	\$34,750
7 Person family	\$59,400	\$44,580	\$37,150
8 Person family	\$63,250	\$47,460	\$39,550
<i>For families with more than 8 persons, please contact the City at 837-5329 for assistance in calculating the appropriate income limits.</i>			

PERFORMANCE DEED OF TRUST

When Recorded, Please Return To:

Pima County Community Development and Neighborhood Conservation
Affordable Housing Program
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

PERFORMANCE DEED OF TRUST

THIS PERFORMANCE DEED OF TRUST (as it may be amended and modified from time to time, this "Deed of Trust") is made as of _____, 2014, by and between Southern Arizona Land Trust, Inc. ("SALT"), an Arizona nonprofit corporation, as trustor ("Trustor"), with a mailing address of _____; Pima County, a political subdivision of the State of Arizona, as beneficiary ("County"), with a mailing address as set forth in the heading above; and _____, as trustee ("Trustee"), with a mailing address of _____.

RECITALS

- A. Trustor holds title to lots 3, 8, 9, 11, 16, 17, 18, 19 and 20 of Corona Road Estates ("Corona Rd. Est's"), a residential subdivision as shown on the plat thereof recorded in Book 61, Page 38 of Maps and Plats in the office of the Pima County Recorder (the "SALT Lots" or "Trustor Lots").
- A. The SALT Lots shall be sold to individuals or families with household incomes at or below 80% of the Area Median Income ("80% AMI") as determined by the U.S. Department of Housing and Urban Development ("Qualified Low Income Buyers").
- B. The SALT Lots are subject to Construction Deeds of Trust in favor of _____ (the "Construction Lender") securing repayment of a development loan and a revolving loan in a principal amount up to \$250,000.00, which documents are recorded in Docket _____ at Page _____, or at Sequence No. _____, in the office of the Pima County Recorder (the "Construction Deeds of Trust").
- C. Pima County and SALT have entered into an agreement, dated _____, 2014 (the "Funding Agreement"), pursuant to which Pima County has agreed to contribute up to \$240,000.00 (the "County Funding") to SALT to construct affordable housing on the SALT Lots. A copy of the Funding Agreement (*without Exhibits A, C, D and E*) is attached to this Deed of Trust as Exhibit A.

- D. Pursuant to the Funding Agreement, SALT has agreed, as a condition precedent to receiving the County Funding, to cause this Deed of Trust to be executed and recorded in order to secure SALT's obligations under the Funding Agreement.

AGREEMENT

1. **Grant.** FOR GOOD AND VALUABLE CONSIDERATION, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of County, under and subject to the terms and conditions hereinafter set forth, those certain real properties described above as the Trustor Lots, together with (i) any and all buildings and other improvements now or hereafter erected on the Trustor Lots; (ii) all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor in connection with the Trustor Lots or as a means of access thereto; (iii) all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Trustor Lots, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Trustor Lots; and (iv) all proceeds of the foregoing; and 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 as of the date hereof, including the Construction Deeds of Trust (together, "the Properties").
2. **Purpose.** The above grant is made for the purpose of (i) securing the performance by SALT of all its obligations under the Funding Agreement, including the obligation to develop and construct affordable single family homes on the Properties in Corona Rd. Est's and all associated improvements, sell each Trustor Lot to a Qualified Low Income Buyer or Buyers, and repay to County certain sums paid by County to SALT under the Funding Agreement in the event that SALT sells a Trustor Lot to other than a Qualified Low Income Buyer; and (ii) securing Trustor's performance of all its obligations under this Deed of Trust.
3. **Release of Lots; Recordation of Affordability Restriction.** County will execute a partial release of the lien of this Deed of Trust with respect to a Trustor Lot at such time as the Lot is sold by Trustor to a Qualified Low Income Buyer. The release will be deposited by County with an escrow agent selected by SALT, within fifteen (15) days after receiving from SALT a written request for the release, along with documentation showing that the Lot is being sold to a Qualified Low Income Buyer. The release will be contingent upon recordation, at closing, of an "Affordability Restriction" in the form set forth as Exhibit "E" to the Funding Agreement, which will restrict subsequent re-sale of each Lot to Qualified Low Income Buyers and provide that the Buyer must, if the Lot is sold to other than Qualified Low Income Buyers, repay to County a stated sum of money, the amount of which will be calculated using a formula set forth in the Funding Agreement attached to this Deed of Trust. The Affordability Restriction will grant to County a lien on the respective Trustor Lot in order to secure this re-sale and contingent repayment obligation, and ***that lien will be considered for all purposes to be a continuation of the lien granted by this Deed of Trust, so that its date for priority purposes will be the date of this Deed of Trust.*** The Affordability Restriction will provide, however, that County's lien is subordinate to any deed of trust granted by Buyer to Buyer's lender to secure repayment of Buyer's purchase money loan.
4. **Obligations of Trustor to Protect Security.** To protect the security of this Deed of Trust, Trustor will:

- 1.1. Keep the Properties in good condition and repair; not remove or demolish any building thereon; complete or restore promptly and in a good and workmanlike manner any building that may be constructed, damaged, or destroyed thereon and pay when due all claims for labor performed and materials furnished for such construction or repair.
- 1.2. Comply with all laws affecting the Properties or requiring any alterations or improvements to be made thereon.
- 1.3. Refrain from committing or permitting waste thereof.
- 1.4. Refrain from committing or permitting, and make reasonable efforts to prevent, any act upon the Property in violation of law.
- 1.5. Provide, maintain, and at County's request provide County with a copy of policies of property insurance.
- 1.6. Appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of County or Trustee; and to pay all costs and expenses of County or Trustee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which County or Trustee may appear or be named, and in any suit brought by County or Trustee to foreclose this Deed of Trust.
- 1.7. Pay, before delinquent, all taxes and assessments affecting the Properties; when due, all encumbrances, charges, and liens, with interest, on the Properties or any part thereof, which appear to be prior or superior hereto, including the obligations secured by the Construction Deeds of Trust; 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 Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of this Deed of Trust following default.

2. Right of County to Protect Security.

- 2.1. If Trustor defaults in any of its obligations under this Deed of Trust, then at County's option County may, without notice to or demand upon Trustor and without releasing Trustor from any obligation, make or do the same in such manner and to such extent as County may deem necessary to protect its security. County is authorized to enter upon any of the Properties for such purposes; appear in and defend any action or proceeding purporting to affect the rights or powers of County or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien that appears to be prior or superior to the County's interest; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay reasonable attorney's fees.
- 2.2. Trustor shall pay immediately and without demand all sums expended by County or Trustee, together with interest from the date of expenditure to the date paid, at the rate of 8% per annum, and this payment obligation will be secured by this Deed of Trust.

3. Right to Sell Property

- 3.1. Upon the occurrence of a default of any obligation of that is secured by this Deed of Trust, County may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee written notice setting forth the nature of the default, and of County's election to cause any or all of the Properties to be sold.
- 3.2. Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee shall sell, in the manner required by law, any or all of the Properties at public auction at the time and place fixed by it in the notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at the time of 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 shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor or County, may purchase at such sale.
- 3.3. After deducting all costs, fees, and expenses of sale, including closing costs, the cost of title insurance, and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of all sums then secured by this Deed of Trust 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. To the extent permitted by law, an action may be maintained by County to recover a deficiency judgment for any amounts owed that are not covered by sales proceeds.
- 3.4. In lieu of sale pursuant to the power of sale conferred above, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosures of mortgages on real property. County shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative.

4. Miscellaneous

- 4.1. Successor Trustee. County may appoint a successor trustee in the manner prescribed by law. A successor trustee will, without specific conveyance from the predecessor trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. A trustee may resign by mailing or delivering notice thereof to County and Trustor.
- 4.2. Binding Agreement. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns and it runs with the land and is binding on all successor owners of the Properties or any interest in the Properties.
- 4.3. Duties of Trustee. 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 shall be a party unless brought by Trustee.

4.4. Request for Notice by Trustor. Trustor requests that a copy of any notice of trustee's sale hereunder be mailed to Trustor at the address set forth at the beginning of this Agreement.

4.5. Notices. All notices to be delivered under this Deed of Trust shall be by first class mail, registered mail or certified mail, postage prepaid, and delivered to the address set forth in this Deed of Trust, unless written notice of a change of address has been delivered.

Southern Arizona Land Trust, Inc., an Arizona nonprofit corporation

By _____

Its _____

STATE OF ARIZONA)
) ss.
County of Pima)

This instrument was acknowledged before me this ____ day of _____, 20__, by _____, as the _____, of Southern Arizona Land Trust, an Arizona nonprofit corporation.

Notary Public

My Commission Expires:

APPROVED AS TO CONTENT:

Margaret Kish, Director, Community Development and
Neighborhood Conservation

Date

APPROVED AS TO FORM:

Karen S. Friar, Deputy Pima County Attorney

ATTACHMENT A

Funding Agreement without Exhibits A, C, D and E

(This Attachment is not included in this exhibit. In the recorded Performance Deed of Trust this Attachment will consist of Pages 1 – 16 of an executed copy of this contract along with all of Exhibit B.)

END OF EXHIBIT C

Exhibit D

PIMA COUNTY AFFORDABLE HOUSING RESTRICTION AND LIEN AGREEMENT

When Recorded, Please Return To:

Pima County Community Development and Neighborhood Conservation
Affordable Housing Program
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

AFFORDABLE HOUSING RESTRICTION AND LIEN AGREEMENT

THIS AGREEMENT (as it may be amended and modified from time to time, the "Affordability Agreement") is made as of _____, _____ by and between _____ whose mailing address is _____, Tucson, Arizona 85_____ (referred to collectively (if more than one) in this document as "Owner"), and PIMA COUNTY, a political subdivision of the State of Arizona, with a mailing address as set forth in the heading above (referred to as "County").

RECITALS

- A. Owner is, simultaneously with entering into this Affordability Agreement, buying certain real property described as Lot _____ of **CORONA ROAD ESTATES** (the "Property"), a residential subdivision as shown on the plat thereof recorded in Book 61, Page 38 of Maps and Plats in the office of the Pima County Recorder.
- B. In order to assist in making the Property affordable for Income-Qualified Persons, including Owner, the County has contributed public funding to the development of a portion of Corona Road Estates, including the Property. In order to secure the developer's obligation to sell the Property to Income-Qualified Persons, the County had a deed of trust on certain portions of Corona Road Estates, including the Property, recorded in Sequence No. _____ in the records of the Pima County Recorder's Office (the "County DOT"). The County is, simultaneously with the recordation of this agreement, releasing the Property from the scope of the County DOT and entering into this Agreement with Owner in order to assure the continued affordability of the Property.

AGREEMENT

1. **Use Restrictions.** The Property shall be subject to the following covenants regulating and restricting the use and transfer of the Property, commencing on the date hereof. These restrictions shall be covenants running with the Property and shall bind Owner and Owner's successors and assigns for a period of thirty (30) years from the date set forth in the introductory sentence of this Agreement.

1.1. **Residential Use.** Owner shall use, and shall cause all occupants to use, the Property only for residential purposes and any incidental activities related to residential use that are currently permitted by applicable state and local zoning laws. Owner shall occupy the Property for at least nine months of each full year during which Owner is the owner of the Property. Occupancy by children or other immediate family members or dependents of Owner shall be considered occupancy by Owner.

1.2. **Transfers.** Owner shall only convey the Property to an Income-Qualified Person except as otherwise specifically permitted herein. "Income-Qualified Person" shall mean a person or group of persons whose household income does not exceed eighty percent (80%) of the area median

household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor agency. A proposed buyer's status as an Income-Qualified Person shall be verified in writing by County or a local Community Housing Development Organization in good-standing with HUD or a HUD certified homebuyer counseling agency.

2. Transfer to Owner's Heirs. Notwithstanding the provisions of Section 1 above, following the death of Owner, Owner's interest in the Property may be transferred to one or more of the following possible heirs of Owner: the spouse of Owner, any child or children of Owner, or members of Owner's household who have resided on the Property for at least one year immediately prior to Owner's death. This Affordability Agreement will survive such a transfer and will continue to bind the Property.

3. Enforcement; Lien.

3.1. Injunctive Relief. County shall have the right to enforce this Affordability Agreement by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, which shall be in addition to, and not in limitation of, any other rights and remedies available to County.

3.2. Penalty. In the event that the Property is transferred, whether voluntarily or involuntarily, by operation of law or otherwise, to anyone other than an Income-Qualified Person, during the term of this Agreement, Owner shall immediately pay to County the sum of \$_____ (the "Affordability Penalty").

3.3. Lien. Owner hereby grants to County a lien on the Property in the amount of the Affordability Penalty, to enforce Owner's obligations under this Agreement (the "County Lien"). The County Lien may be foreclosed by County in the same manner provided by law for the foreclosure of mortgages on real property.

3.3.1. Upon payment of the Affordability Penalty to County, County will execute and record a document releasing the Property from this Agreement, and from the County Lien.

3.3.2. The County Lien will be deemed for all purposes to be a continuation of the lien granted to the County by the County DOT, and shall be superior to all monetary liens and encumbrances other than a lien granted by Owner to a lender for the purpose of securing repayment of a loan obtained by Owner to purchase the Property (a "Purchase Money DOT"). This lien shall be automatically subordinated to a Purchase Money DOT, without the necessity of any further acknowledgement by County, but County will, if requested by Owner, execute a document, in a form reasonably acceptable to County, evidencing such subordination. The County Administrator or his/her designee shall have the authority to execute such a subordination agreement on behalf of the County.

3.3.3. Notwithstanding any implication to the contrary, in the event of a foreclosure or deed in lieu of foreclosure of the Purchase Money DOT, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting Owner's ability to sell the Property shall have no effect on subsequent owners or purchasers of the Property. Any person, including his or her successors or assigns (other than Owner or a related entity of Owner), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the Purchase Money DOT shall receive title to the Property free and clear from such restrictions. The obligation to repay the Affordability Penalty shall terminate after any such foreclosure or deed in lieu of foreclosure, except, however, that in the event the foreclosed property is sold at a trustee's sale or

mortgage foreclosure for more than the amount of the balance due on the mortgage, any funds in excess of the amount to satisfy the Purchase Money DOT shall be distributed to County up to the amount of the lien established by the County Deed of Trust.

4. **Severability.** If any provision of this Affordability Agreement shall to any extent be held invalid, the remainder shall not be affected but will remain in effect and valid and enforceable by the parties by any legal or equitable means.

5. **Recordation of Documents.** The benefits of this Affordable Housing Restriction shall be in gross and shall be assignable by County to any successor institution or nonprofit affordable housing organization. County and Owner intend that the restrictions arising hereunder will take effect upon the date hereof. To the extent that the enforceability of this Agreement by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

5. **Notice.** Any notice, request or other communication which any party hereto may be required or may desire to give to Grantor or Owner shall be made in writing, and shall be deemed to have been properly given if mailed by United States registered or certified mail, postage prepaid, return receipt requested, or hand delivered, and addressed as follows, or such other address as the applicable party may have furnished in writing to the party seeking to serve notice as a place for the service of notice, provided, however, that the Owner shall use reasonable business efforts to ascertain the mailing address of Grantor which is current as of the date of such notice:

County: Pima County Community Development and Neighborhood Conservation
Affordable Housing Program
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

Owner: Notice to Owner shall be provided at the address of the Property.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE(S) ON FOLLOWING PAGE**

7. Restraint on Alienation. If this Affordability Agreement is deemed unenforceable by virtue of its scope in terms of purpose or eligibility of Income-Qualified Persons but would be enforceable by reducing or increasing, as applicable, any part or all thereof, the same shall be enforced to the fullest extent permissible under the laws and public policies applied in the State of Arizona.

_____, Owner

_____, Owner

STATE OF ARIZONA)
) ss.
County of Pima)

This instrument was acknowledged before me this ____ day of _____, 20 ____,
by

_____ and _____.

Notary Public

My Commission Expires:

CONSENT TO SUBORDINATION

Pursuant to Section 3.3.2 of the foregoing Affordability Housing Restriction and Lien Agreement, PIMA COUNTY, a political subdivision of the State of Arizona, does hereby for all purposes consent and agree to the subordination of such Affordability Housing Restriction and Lien Agreement to the lien of the Purchase Money DOT, as defined therein, recorded contemporaneously herewith.

Dated this day of _____, 20____.

PIMA COUNTY, a political subdivision of the State of Arizona

By:

Director, Community Development and Neighborhood
Conservation Department

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing Consent to Subordination was acknowledged before me this day of _____, 20____ by Margaret Kish, Director of the Community Development and Neighborhood Conservation Department of PIMA COUNTY, a political subdivision of the State of Arizona.

Notary Public

My Commission Expires:

END OF EXHIBIT D

Exhibit E

Monthly Progress Report

SOUTHERN ARIZONA LAND TRUST – CORONA ROAD ESTATES PROJECT

For the Month of _____, 20__

DESCRIPTION	TOTAL AMOUNT BUDGETED (ALL SOURCES)	TOTAL COMPLETED THIS MONTH	TOTAL COMPLETED PRIOR MONTH(S)	TOTAL AMOUNT SPENT TO DATE	BOND \$'s SPENT THIS MONTH	BOND \$'s SPENT PRIOR MONTHS	BOND \$'s SPENT TO DATE
Lot 3 Construction	\$130,000.00						
Lot 8 Construction	\$130,000.00						
Lot 9 Construction	\$130,000.00						
Lot 11 Construction	\$130,000.00						
Lot 16 Construction	\$130,000.00						
Lot 17 Construction	\$130,000.00						
Lot 18 Construction	\$130,000.00						
Lot 19 Construction	\$130,000.00						
Lot 20 Construction	\$130,000.00						
TOTAL	\$1,170,000.00						

ADDITIONAL PROJECT INFORMATION FOR BILLING PERIOD:

- Milestones completed:
- Problems encountered:
- Changes requested for Construction or Reimbursement Schedule: