BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: July 5, 2016
or Procurement Director Award ☐

Contractor/Vendor Name (DBA): TMM Family Services, Inc.

Project Title/Description:
TMM Family Services Senior and Veterans Housing Project

Purpose:
Award HUD HOME Investment Partnership Program (HOME) funds from Pima County to TMM Family Services for low income, senior and veterans housing development.

Procurement Method:
NOFA-CCD.HR-01-2016

Program Goals/Predicted Outcomes:
Provide and preserve affordable housing for low income seniors and veterans of Pima County.

Public Benefit:
Affordable, rental housing for seniors and veterans.

Metrics Available to Measure Performance:
Twenty (20) new rental housing units.

Retroactive:
No.

JUN 23 '16 PM 04:05 PCPLKDF-ITD

Original Information

Document Type: CT Department Code: CD Contract Number (i.e.,15-123): 16*00430

Effective Date: 7/5/2016 Termination Date: 7/4/2017 Prior Contract Number (Synergen/CMS): _____

☒ Expense Amount: $ 708,000.00 ☐ Revenue Amount: $ _____

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

Cost to Pima County General Fund: None

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

Were insurance or indemnity clauses modified? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

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

Amendment Information

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

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: $ _____

Funding Source(s):

Cost to Pima County General Fund: _____

To: COB. 6-23-16 (2)
Ver. 1
Pgs. - 70 Addendum

Procure Dept 06/23/16 PM08:24

Contact: Marcos Ysmael

Department: Comm. Dev. & Neighborhood Cons. Telephone: 520-824-2462

Department Director Signature/Date: Margaret M. Lee 06/22/2016

Deputy County Administrator Signature/Date: 6/22/2016

County Administrator Signature/Date: 6/22/16

(Required for Board Agenda/Addendum Items)

CONTRACT
NO. CT-CD-16-430
AMENDMENT NO. _____
This number must appear on all invoices, correspondence and documents pertaining to this contract.

PIMA COUNTY COMMUNITY DEVELOPMENT AND NEIGHBORHOOD CONSERVATION DEPARTMENT

Program/Project Name: TMMFS Senior and Veterans Housing Project

Contractor: TMM Family Services, Inc.

DUNS No.: 02-498-5418

Project Description: Construct 20 new affordable rental units for low-income seniors and veterans.

Contract Term: July 5, 2016, or upon execution by the Pima County Board of Supervisors, whichever is later, through July 4, 2017

Amount: $708,000.00

Funding: U.S. Department of Housing and Urban Development (HUD) - Home Investment Partnership Program (HOME Program)

CFDA	Program Description	National Funding	Pima County/City of Tucson Consortium Award
14.239	HOME Program	$950,000,000.00	$2,532,186.00

Is this a Research and Development Contract: ☐ Yes ☒ No

This Agreement is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and TMM Family Services, Inc., a non-profit corporation doing business in the State of Arizona ("Developer").

RECITALS

A. In 1992 County and the City of Tucson ("City") formed the Pima County/City of Tucson Consortium under Pima County Contract No. CTN-CD-13*383 ("the Consortium") and obtained federal HOME Investment Partnership Program ("HOME") funds from the U.S. Department of Housing and Urban Development ("HUD").

B. The Consortium annually receives HOME funds from HUD for homeownership assistance and affordable housing programs in Pima County.

C. Both County and City may utilize a portion of the Consortium's HOME funds for qualified projects within their respective jurisdictions.

D. In May, 2015 the Consortium issued notice that applications for HOME funding were being accepted.

E. Developer submitted a proposal which qualifies for HOME funds.

F. Developer is a qualified, eligible HOME Program Developer.

G. Developer will use HOME funds to construct twenty (20) new rental units that will be affordable to low-income seniors age 62 and over and veterans. The units will be constructed on two (2) separate sites owned by Developer ("the Project").

H. The Project qualifies as a HOME eligible "Developer" activity under 24 CFR Part 92 at §92.504(c)(3).

I. The Pima County Board of Supervisors finds that the Project is an appropriate and beneficial use of the County's HOME funding.

J. The Pima County Board of Supervisors further finds that this use of HOME funds is consistent with the Consolidated Plan and Annual Action Plan of the Consortium that was submitted to and approved by HUD.

K. Developer is qualified and able to complete construction of twenty (20) affordable, energy efficient residential rental units for low-income seniors and veteran households. Seven (7) of the rental units will be attributed to the County HOME Program and reserved for very low-income households as defined by HUD.

L. All 20 units in the Project will remain affordable for a minimum of twenty (20) years.

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

1.0 TERM AND EXTENSIONS

1.1 This Agreement, as awarded by County, will commence on July 5, 2016 or upon execution by the Pima County Board of Supervisors, whichever is later and will terminate on July 4, 2017, unless sooner terminated or further extended pursuant to the provisions of this Agreement. County will have the option to renew this Agreement for up to one (1) 12-month period or any portion thereof.

1.2 Except as set forth in Paragraph 1.4 below, any modification or extension of the contract termination date must be by formal written amendment executed by the parties hereto.

1.3 Any amendments to the Agreement must be approved by the County before any services under the amendment commences.

1.4 Minor modifications may be made by written memorandum approved and signed by the Director of the Pima County Community Development and Neighborhood Conservation Department or designee. Minor modifications are changes in the scope or budget, which do not change the specified purpose, outcomes or the total compensation provided through this Agreement and do not in any way increase the direct or indirect liability of the County under this Agreement.

1.5 Notwithstanding paragraph 1.1 above, the terms of this Agreement will survive and remain in effect during any period that Developer has control over HOME funds, including program income.

2.0 SCOPE OF SERVICES

2.1 Developer will:

2.1.1 Provide the County with the services described in the attached **Exhibit A**.

2.1.2 Employ suitably trained and skilled personnel to perform all services under this Agreement.

2.1.3 Comply with the federal Section 3 requirements of 24 CFR 135.1 as specified in the attached **Exhibit B, Attachments B-1 through B-6** – Section 3 Special Conditions.

2.1.4 Perform its duties in a humane and respectful manner and in accordance with any applicable professional standards.

2.1.5 Unless otherwise provided for herein, the personnel delivering Agreement services will:

2.1.5.1 Be employees or volunteers of the Developer;

2.1.5.2 Satisfy any qualifications set forth in this Agreement; and

2.1.5.3 Be covered by personnel policies and practices of the Developer.

2.1.6 Obtain and maintain all required licenses, permits and authority required for performance under this Agreement.

2.1.7 Maintain an accounting manual that describes its financial procedures in sufficient detail to ensure that its financial practices are easily understood.

2.1.8 Undertake the same obligations to the County, as the County does to HUD pursuant to the 2014 - 2015 Annual Action Plan, the 2015 Consolidated Plan, the 2015-16 Annual Action Plan and their respective assurances. Developer will hold COUNTY harmless against any injury that COUNTY may suffer with respect to HUD on account of any failure on the part of Developer to fulfill obligations to HUD.

2.2 Confidentiality. Developer:

2.2.1 Understands that client and applicant files and information collected pursuant to the terms of this Agreement are private and the use or disclosure of such information, when not directly connected with the administration of County's or Developer's responsibilities with respect to services provided under this Agreement is prohibited, unless written consent is obtained from the individual or, in the case of a minor, from the responsible parent or guardian.

2.2.2 Will provide access to these files only to persons properly authorized.

2.2.3 Will observe and abide by all applicable State and Federal statutes and regulations regarding use or disclosure of information including, but not limited to, information concerning applicants for and recipients of contract services.

2.3 Developer certifies that no individual or agent has been employed or retained to solicit or secure this Agreement for commission, percentage, brokerage or contingent fee except a bona fide employee whose job duties include securing business.

2.4 No program funded under this Agreement may impair existing contracts for services or collective bargaining agreements or be inconsistent with the terms of a collective bargaining agreement without the written concurrence of the labor organization and employer concerned.

3.0 MONITORING AND EVALUATION

3.1 County will monitor all activities and information sources in the management, fiscal, and services systems of Developer and any subcontracted parties relating to performance of duties and obligations under this Agreement to ensure that Developer is:

3.1.1 Making adequate and acceptable progress in the provision of services;

3.1.2 Maintaining adequate and acceptable systems to document services and expenditures; and

3.1.3 Using the funds provided pursuant to this Agreement effectively and efficiently to accomplish the purposes for which funds were made available.

3.2 For monitoring and evaluation, Developer must provide source documentation for payroll which may include, but is not limited to:

3.2.1 Employment letters;

3.2.2 Authorization for rates of pay, benefits, and withholding;

3.2.3 Minutes from Board of Directors' meetings establishing salary schedules and benefit packages;

3.2.4 Copies of written policies;

3.2.5 W-4 forms and associated time and attendance records;

3.2.6 Employee certifications of time spent:

3.2.6.1 If an employee of Developer works solely on the services being funded by HOME, the employee and the employee's supervisor must sign a statement every six months certifying that the employee worked only on the HOME-funded services.

3.2.6.2 If an employee's time is split between the services being funded by HOME and non-HOME services and funding sources, Developer must have time distribution records supporting the allocation of charges among the various funding sources.

3.3 Developer must cooperate in the monitoring and evaluation process by County and/or HUD.

3.4 Developer must assist County in providing reports and documentation related to Developer's performance and, where applicable, the impact of the HOME-funded activities on the community, to HUD.

3.5 If monitoring and evaluation finds that Developer's performance is substandard, Developer will be in default of this Agreement. If Developer fails to take appropriate actions to correct the default within fifteen (15) calendar days from date of notice, this Agreement may be suspended or terminated.

3.6 To the greatest extent permissible by law, County, and any authorized federal, state or local agency, including, but not limited to, the U.S. Department of Housing and Urban Development, and the Comptroller of the United States will at all reasonable times have the right of access to Developer's facility, books, documents, papers, or other records which are pertinent to this Agreement, in order to make audits, examinations, excerpts and transcripts for the purpose of evaluating Developer's performance and Developer's compliance with this Agreement.

4.0 COMPENSATION AND PAYMENT

4.1 In consideration for services specified in **Exhibit A** of this Agreement, County agrees to pay Developer **up to $708,000.00** ("the Maximum Allocated Amount").

4.2 Payment will be made from the HOME Grant received by the Consortium from the U.S. Department of Housing and Urban Development ("the awarding agency") and allocated to the County HOME program.

4.3 Payment of the full Maximum Allocated Amount is subject to the HOME funds being made available to County for this Agreement. The Maximum Allocated Amount may be decreased at any time due to reduction, termination, or any other changes in funding. Unless specifically authorized by County, unexpended funds will not be carried over into another fiscal year.

4.4 Monthly Progress Reports. Within fifteen (15) days of the end of each month, Developer shall submit a Monthly Progress Report ("Progress Report") in the format set forth in **Exhibit C**. The Progress Report must be submitted regardless of whether Contractor is seeking reimbursement for the preceding month

4.5 Requests for reimbursement must:

4.5.1 Reference this contract number.

4.5.2 Be approved and signed by an authorized representative of the Developer.

4.5.3 Be for services and costs as identified in **Exhibit A**.

4.5.4 Be submitted only upon completion of an environmental review as described in section 8.2, below.

4.5.5 Be accompanied by documentation which must include, but is not limited to:

4.5.5.1 A payment request and summary report of monthly expenditures by expense categories as shown in **Exhibit C** of this Agreement.

4.5.5.2 Copies of invoices and checks (front and back) to support all purchases of goods or services.

4.5.5.3 Copies of unconditional progress payment lien waivers (general contractor) and for the final payment request - unconditional final payment lien waivers from the general contractor and all sub-contractors.

4.5.5.4 Any other documentation requested by County.

4.6 If Developer is required to provide matching funds under the terms of the awarding agency, Developer must also provide the documentation described in Paragraph 4.5.5 for the matching funds.

4.7 **Developer must utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.** Developer may not bill the County for costs which are paid by another source. Developer must notify County within ten (10) days of receipt of alternative funding for costs which would otherwise be subject to payment pursuant to this Agreement.

4.8 If each request for payment includes adequate and accurate documentation, County will generally pay Developer within thirty (30) days from the date invoice is received. Developer should budget cash needs accordingly.

4.9 County may, at its sole discretion:

4.9.1 Determine the acceptability and progress of work performed and determine the resulting entitlement to payment of each request for reimbursement.

4.9.2 Liquidate funds available under this Agreement for costs incurred by County on behalf of Developer.

4.9.3 **Deny full payment** for requests for reimbursement that are submitted to County after the date set forth in Paragraph 3.4. County may deduct its processing costs or delay-related damages in connection with a request for payment submitted after that date.

4.9.4 **Deny payment** for any request for reimbursement.

4.10 Pursuant to A.R.S. § 11-622, COUNTY **will deny reimbursement completely** for requests for payment made later than six months after the last item of the account accrues.

4.11 **FINAL PAYMENTS – WILL BE DISBURSED AS FOLLOWS:**

4.11.1 10% of the Maximum Allocated Amount ($70,800.00) will be withheld until the occurrence of the following:

4.11.1.1 5% of the Maximum Allocated Amount ($35,400.00) will be disbursed upon receipt of the Certificates of Occupancy for all the housing units in the Project; and

4.11.1.2 5% of the Maximum Allocated Amount ($35,400.00) will be disbursed upon receipt of the HOME Program Completion Report attached as **Exhibit D**.

4.11.2 The final request must be submitted to the County no later than **15 working days after the end of the contract term**. The request must meet the requirements set forth in Paragraph 3.4

and include a report summarizing Developer's performance during the term of the Agreement.

4.12 **NO PAYMENTS WILL BE MADE TO DEVELOPER, UNTIL ALL OF THE FOLLOWING CONDITIONS ARE MET:**

4.12.1 Developer has completed and submitted a W-9 Taxpayer Identification Number form;

4.12.2 Developer has registered as a Pima County Vendor at the following web address -- https://secure.pima.gov/procurement/vramp/login.aspx);

4.12.3 This Agreement is fully executed;

4.12.4 Construction Documents. Developer has provided County with copies of fully executed construction contracts including all pertinent bid notices, bid tabulation & award documents, construction drawings, construction schedules, updates and amendments;

4.12.5 Execution of Liens. Developer has properly executed and County has recorded the Affordability Restrictions in the forms attached to this Contract as **Exhibit E** and **Exhibit F**;

4.12.6 Marketing and Tenant Plans and Procedures. Developer has provided County with copies of an Affirmative Marketing Plan, Resident Selection Criteria, Tenant Grievance and Dispute Resolution Procedures, all of which meeting the requirements of HUD and Fair Housing regulations;

4.12.7 Proof of Insurance. Developer shall have furnished to County proof that it has in place all the insurance policies required by Section 6 herein; and,

4.12.8 Adequate and accurate documentation is provided with each request for payment or invoice.

4.13 Developer will report to County:

4.13.1 Accrued expenditures;

4.13.2 Program income, as defined by the awarding agency; and

4.13.3 All other fiscal resources applied to expenses incurred in providing services under this Agreement.

4.14 Changes between budget line items may only be made as follows:

4.14.1 Changes of LESS than 15% of the total budget amount may be granted by and at the sole discretion of the Director of Community Development and Neighborhood Conservation or designee. Developer must submit a written request and show that any proposed increase is offset by a decrease of equal value to the remaining line items. No increase to the total operating budget will be allowed. **The change will not be effective, nor will compensation under the change be provided, until the date set forth in the written approval of the Director or designee.**

4.14.2 Changes of MORE than 15% of the total budget will require a contract amendment. **The change will not be effective, nor will compensation under the change be provided, until the contract amendment is fully executed by both parties.**

4.15 Disallowed Charges or Cost principles will be as follows:

4.15.1 The cost principle set forth in the Code of Federal Regulations (CFR), Title 48, Chapter 1, Part 31.201-6, (October 1, 1991), as modified by amendments and additions, on file with the Secretary of State and incorporated herein by reference, will be used to determine the allowability of incurred costs for the purpose of reimbursing costs under Agreement provisions which provide for the reimbursements of costs. Those costs which are

specifically defined as unallowable therein cannot be submitted for reimbursement by the Developer and will not be reimbursed with Department funds.

4.15.2 **Developer must reimburse County for improper, unallowable or unsubstantiated costs discovered as a result of audit or otherwise within thirty (30) days following demand for reimbursement by County**.

4.16 For the period of record retention required under Section 20.0 -- Books and Records, County reserves the right to question any payment made under this Section 20.0 and to require reimbursement by setoff or otherwise for payments determined to be improper or contrary to the Agreement or law.

5.0 PROGRAM INCOME

5.1 County does not anticipate that Developer will generate program income, as defined by the awarding agency, will be generated under the activities of this Agreement.

5.2 In the event that activities under this Agreement do generate program income or program income is authorized, Developer must:

5.2.1 Report to County all program income, as defined at 24 CFR 92.503, generated and received as a result of activities carried out with the HOME-funds provided pursuant to this Agreement. These reports are due annually.

5.2.2 Return program income to County within 15 days of the end of the month in which the Annual Rent and Occupancy Report (**Exhibit G**) is submitted, unless otherwise specified in **Exhibit A**.

6.0 INSURANCE

6.1 Pima County in no way warrants that the minimum limits contained herein are sufficient to protect the Developer from liabilities that might arise out of the performance of the work under this Agreement by the Developer, its agents, representatives, employees or subcontractors, and Developer is free to purchase additional insurance.

6.2 Minimum Scope and Limits of Insurance: Developer must have coverage with limits of liability not less than those stated below.

6.2.1 Commercial General Liability – Occurrence Form

6.2.1.1 Policy must include bodily injury, property damage, personal injury and broad form contractual liability.

General Aggregate	$2,000,000.00
Products – Completed Operations Aggregate	$1,000,000.00
Personal and Advertising Injury	$1,000,000.00
Blanket Contractual Liability – Written and Oral	$1,000,000.00
Fire Legal Liability	$ 50,000.00
Each Occurrence	$1,000,000.00

6.2.1.2 Policy must be endorsed to **include coverage for sexual abuse and molestation**.

6.2.1.3 Policy must 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 Primary Insured".**

6.2.1.4 Policy must 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 Developer.

6.2.2 Automobile Liability: Policy must include bodily Injury and property damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

6.2.2.1 Combined Single Limit (CSL) $1,000,000.00

6.2.2.2 Policy must 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 Developer, involving automobiles owned, leased, hired or borrowed by the Developer".**

6.2.2.3 Policy must 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 Developer.

6.2.3 **Worker's Compensation and Employers' Liability**

6.2.3.1 Workers' Compensation Amount required by statute

6.2.3.2 Employers' Liability:

Each Accident	$ 500,000.00
Disease – Each Employee	$ 500,000.00
Disease – Policy Limit	$1,000,000.00

6.2.3.3 Policy must 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 Developer.

6.2.3.4 This requirement will 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.

6.3 Additional Insurance Requirements: The policies must contain, or be endorsed to contain, the following provisions:

6.3.1 Pima County, wherever additional insured status is required, will be covered to the full limits of liability purchased by Developer, even if those limits of liability are in excess of those required by this Agreement.

6.3.2 Developer's insurance coverage will be primary insurance and non-contributory with respect to all other available sources.

6.3.3 Coverage provided by the Developer will not be limited to the liability assumed under the indemnification provisions of this Agreement.

6.3.4 The Project Name/Agreement Number and project description must be noted on the Certificate of Insurance.

6.3.5 All Certificates of Insurance are to be received and approved by Pima County before work commences.

6.4 Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must 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 must be sent directly to the **Pima County CDNC, Attn: Department Director, RE: HOME PROGRAM, 2797 E. Ajo Way, 3rd Floor, Tucson, AZ 85713** by certified mail, return receipt requested.

6.5 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 and County in no way warrant that the above-required minimum insurer rating is sufficient to protect the Developer from potential insurer insolvency.

6.6 Approval and Modifications: Pima County Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Agreement amendment but may be made by administrative action.

7.0 INDEMNIFICATION

7.1 Developer will 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 the Developer, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Agreement.

7.2 Developer warrants that services provided under this Agreement are non-infringing. Developer will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this Agreement or from the provision, license, transfer or use for their intended purpose of any products provided under this Agreement.

8.0 COMPLIANCE WITH LAWS

8.1 Developer will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement must 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 Agreement will apply, but do not require an amendment.

8.2 Developer will comply with the requirements of 24 CFR Part 92, including subpart H of these regulations, except the Developer does not assume:

8.2.1 County's environmental responsibilities described in 24 CFR 92.352; and

8.2.2 County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

8.3 Developer warrants that HOME funds provided or personnel employed in the administration of the program funded under this Agreement will not be used for:

8.3.1 Political activities;

8.3.2 Inherently religious activities;

8.3.3 Lobbying;

8.3.4 Political patronage; or

8.3.5 Nepotism activities.

8.4 Developer will comply with the applicable provisions of:

8.4.1 Davis-Bacon Act (Public Law 107-217), as amended;

8.4.2 Contract Work Hours and Safety Standards Act (40 USC 327 *et seq.*);

8.4.3 Copeland Anti-Kick Back Act (18 USC 874 *et seq.*);

8.4.4 Section 3 of the HUD Act of 1968 as amended;

8.4.5 Fair Housing Act (42 U.S.C. 3601-3620);

8.4.6 Section 504 of the Rehabilitation Act of 1973;

8.4.7 Section 202 of the Flood Disaster Protection Act of 1973 (U.S.C. 4106); and

8.4.8 All rules and regulations applicable to the Acts set forth above.

8.5 Developer will fully cooperate with County, HUD and any other federal agency in the review and determination of compliance with the above provisions.

9.0 INDEPENDENT CONTRACTOR

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

10.0 SUBCONTRACTORS

10.1 Except as provided in paragraph 10.2, Developer will not enter into any subcontracts for any services to be performed under this Agreement without County's prior written approval of the subcontract. Developer must follow all applicable Federal, State, and County rules and regulations for obtaining subcontractor services.

10.2 Prior written approval is not required for the purchase of supplies that are necessary and incidental to Developer's performance under this Agreement.

10.3 Developer 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 the Developer is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract will 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.

10.4 Developer must include the provision set forth in paragraph 3.6 in all contracts between Developer and its subcontractors providing goods or services pursuant to this Agreement. Developer will be responsible for subcontractors' compliance with that provision and for any disallowances or withholding of reimbursements resulting from noncompliance of said subcontractors with the provision.

11.0 ASSIGNMENT

Developer will not assign its rights to this Agreement in whole or in part, without prior written approval of the County. Approval may be withheld at the sole discretion of the County, provided that such approval will not be unreasonably withheld.

12.0 NON-DISCRIMINATION

12.1 Developer 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.

12.2 During the performance of this contract, Developer will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

13.0 AMERICANS WITH DISABILITIES ACT

Developer will 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. If Developer is carrying out a government program or services on behalf of County, then Developer will maintain accessibility to the program to the same extent and degree that would be required by the 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 Agreement.

14.0 AUTHORITY TO CONTRACT

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

15.0 FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance of any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, will 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 will not be construed as an accord and satisfaction.

16.0 CANCELLATION FOR CONFLICT OF INTEREST

16.1 This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

16.2 Developer agrees to comply with all applicable conflict of interest provisions contained in Federal laws and regulations that govern the awarding agency including 24 CFR 84.42 and 92.356.

17.0 TERMINATION AND SUSPENSION

17.1 Termination for Convenience: County reserves the right to terminate this Agreement at any time and without cause by serving upon Developer thirty (30) days advance written notice of such intent to terminate. In the event of such termination, the County's only obligation to Developer will be payment for services rendered prior to the date of termination.

17.2 Insufficient Funds: Notwithstanding Paragraph 17.1 above, if any state or federal grant monies used to pay for performance under this Agreement are reduced or withdrawn, County will have the right to either reduce the services to be provided and the total dollar amount payable under this Agreement or terminate the Agreement. To the extent possible, County will endeavor to provide fifteen (15) days written notice of such reduction or termination. In the event of a reduction in the amount payable, County will not be liable to Developer for more than the reduced amount. In the event of a termination under this paragraph, County's only obligation to Developer will be payment for services rendered prior to the date of termination to the extent that grant funds are available.

17.3 Termination for Cause: This Agreement may be terminated at any time without advance notice and without further obligation by the County when the Developer is found by County to be in default of any provision of this Agreement.

17.4 Non-Appropriation: Notwithstanding any other provision in this Agreement, this Agreement 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 Agreement. In the event of such termination, County will have no further obligation to Developer, other than for services rendered prior to termination.

17.5 Suspension: County reserves the right to suspend Developer's performance and payments under this Agreement immediately upon notice delivered to Developer's designated agent in order to investigate Developer's activities and compliance with this Agreement. In the event of an investigation by County, Developer will cooperate fully and provide all requested information and documentation. At the conclusion of the investigation, or within forty-five (45) days, whichever is sooner, Developer will be notified in writing that the contract will be immediately terminated or that performance may be resumed.

18.0 NOTICE

18.1 Developer must give written notice of any change of corporate or entity status as promptly as possible and, in any event, within fifteen (15) days after the change is effective. A change in corporate or entity status includes, but is not limited to, change from unincorporated to incorporated status and vice versa and any suspension or termination of corporate status based on failure to comply with all applicable federal, state, and local reporting requirements.

18.2 Any notice required or permitted to be given under this Agreement must be in writing and must be served by delivery or by certified mail upon the other party as follows:

County:

Margaret Kish, Director
Pima County Community Development and
Neighborhood Conservation
2797 E. Ajo Way
Tucson, AZ 85713

Developer:

Don Strauch, Executive Director
TMM Family Services, Inc.
1550 N. Country Club Rd.
Tucson, AZ 85716

19.0 OTHER DOCUMENTS

19.1 In entering into this Agreement, Developer and County have relied upon information provided in Developer's proposal submitted in response to Pima County Solicitation identified in the recitals of this Agreement ("the RFP") including the Instructions to Bidders, Standard Terms and Conditions, Specific Terms and Conditions, Solicitation Addenda, Developer's Proposal, other information and documents submitted by the Developer in its' response to said Solicitation.

19.2 The documents set forth in Paragraph 19.1 are hereby incorporated into and made a part of this Agreement as if set forth in full herein, to the extent not inconsistent with the provisions of this Agreement, including all exhibits. Developer will promptly bring any provisions which Developer believes are inconsistent to County's attention, and County will provide Developer with its interpretation of the provisions in question. In the event of an irreconcilable inconsistency, the provisions of the awarding agency documents will govern over the conditions of this Agreement, unless otherwise required by law.

20.0 BOOKS AND RECORDS

20.1 Developer will keep and maintain all records specified in 24 CFR 92.508 which are pertinent to the activities funded under this Agreement. All such records will be open for inspection and audit by duly authorized representatives of County during normal business hours. Records include, but are not limited to:

20.1.1 A full description of each action or activity taken to comply with this Agreement;

20.1.2 Demonstration that the actions and activities meet the intent of the HOME program;

20.1.3 Eligibility documentation and determination;

20.1.4 Documentation of compliance with the fair housing and equal opportunity components of the HOME program;

20.1.5 Documentation of down payment assistance including homebuyer eligibility, property eligibility and long term affordability;

20.1.6 Disbursements of funds;

20.1.7 Financial records required under 24 CFR §92.508(a)(5); and

20.1.8 Documentation of compliance with Subpart H of 24 CFR Part 92.

20.2 Developer must retain all records pertaining to this Agreement for five (5) years after the end of the HOME Affordability Period or until completion of any action and resolution of all issues which arise from any related litigation, claim, negotiations, audit or other action involving the records that was started before the expiration of the 5-year period, whichever is later.

21.0 AUDIT REQUIREMENTS

21.1 Developer will:

21.1.1 Comply with the applicable provisions of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Parts200 and 2400).

21.1.2 **Establish and maintain a separate, identifiable accounting of all funds provided by County under this Agreement**. The accounting must record all expenditures which are used to support invoices and requests for payment from the County.

21.1.3 Establish and maintain accounting records which identify the source and application of any funds not provided under this Agreement used to support these Agreement activities.

21.1.4 Ensure that all accounting records meet the requirements of the Federal, State, County, and generally accepted accounting principles laws and regulations.

21.1.5 Upon written notice from County, provide a program-specific or financial audit. Such notice from County will specify the period to be covered by the audit, the type of audit and the deadline for completion and submission of the audit.

21.1.6 Assure that any audit conducted pursuant to this Agreement is performed by a qualified, independent accounting firm and submitted to County within six (6) months of completion of the audit required pursuant to this Section 21.0, unless a different time is specified by County. The audit submitted must include Developer's responses, if any, concerning any audit findings.

21.1.7 Pay all costs for any audit required or requested pursuant to this Section 21.0, unless the cost is allowable for payment with the grant funds provided pursuant to this Agreement under the appropriate federal or state grant law and the cost was specifically included in the Developer grant budget approved by County.

21.2 Developer status:

21.2.1 If Developer is a "nonprofit corporation" that meets the definition of "corporation" in A.R.S. §10-3140, Developer will comply with the applicable audit requirements set forth in A.R.S. § 11-624, "Audit of Non-Profit Corporations Receiving County Monies."

21.2.2 If Developer meets or exceeds the single audit threshold set forth in 2 C.F.R. Part 200, Developer will comply with federal single audit requirements and, upon request from County, provide County with a copy of the required audit document within ninety (90) days following the end of Developer's fiscal year.

21.3 Developer must timely submit the required or requested audit(s) to:

Marcos Ysmael, Community Development and Housing Planner, III
Pima County Housing Center
801 W Congress Street
Tucson, AZ 85745

22.0 COPYRIGHT

Neither, Developer nor its officers, agents or employees will copyright any materials or products developed through contract services provided or contract expenditures made under this Agreement without prior written approval by the County. Upon approval, the County will have a non-exclusive and irrevocable license to reproduce, publish or otherwise use or authorize the use of any copyrighted material.

23.0 PROPERTY OF THE COUNTY

23.1 Developer is not the agent of County for any purpose and will not purchase any materials, equipment or supplies on the credit of County.

23.2 Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of County. Developer is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Developer will not use or release these materials without the prior written consent of County.

24.0 DISPOSAL OF PROPERTY

Termination of this Agreement will not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of property pursuant to this Agreement.

25.0 COORDINATION

On matters relating to the administration of this Agreement, County will be Developer's contact with all Federal, State and local agencies that provide funding for this Agreement.

26.0 PUBLIC INFORMATION

26.1 Pursuant to Arizona Public Records law, A.R.S. § 39-121 *et seq.*, documents submitted by Developer to County may be considered public records and may be subject to release to any member of the public. Records subject to release may include, but are not limited to: pricing, product or program specifications, work plans, and any supporting data.

26.2 In the event that County receives a public records request pursuant to A.R.S. § 39-121 *et seq.* for documents Developer submitted to County, County will notify Developer on the same day the request is made or as soon as possible thereafter.

26.3 County will release Developer's records ten (10) business days after the date of notice to the Developer, unless Developer has 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 will not be counted in the time calculation.

26.4 County will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records submitted to County by Developer nor will County be in any way financially responsible for any costs associated with securing such an order.

27.0 ELIGIBILITY FOR PUBLIC BENEFITS

Developer will comply with applicable provisions of A.R.S. §§1-501 and 1-502 regarding public benefits, which are hereby incorporated as provisions of this Agreement.

28.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE

28.1 Developer hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Developer's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Developer will further ensure that each subcontractor who performs any work for Developer under this contract likewise complies with the State and Federal Immigration Laws.

28.2 County will have the right at any time to inspect the books and records of Developer and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

28.3 Any breach of Developer's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, will be deemed to be a material breach of this Agreement subjecting Developer to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Developer will 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 Minority and Women Business E preferences apply) as soon as possible so as not to delay project completion.

28.4 Developer will advise each subcontractor of County's rights, and the Subcontractor's obligations, under this Article (or Section?) 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."

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

29.0 REMEDIES

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

30.0 SEVERABILITY

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

31.0 NON-EXCLUSIVE AGREEMENT

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

32.0 ENTIRE AGREEMENT

32.1 This document constitutes the entire agreement between the parties pertaining to the subject matter hereof.

32.2 No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Agreement will affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement will be considered as unofficial information and in no way binding upon County and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

32.3 This Agreement 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 Agreement on the date written below.

PIMA COUNTY

_____
Chair, Board of Supervisors

Date: _____

ATTEST

_____
Clerk of the Board

Date: _____

APPROVED AS TO CONTENT:

Margaret Th. Kae 06/22/2016
Director, Community Development
and Neighborhood Conservation

APPROVED AS TO FORM:

Karen S. Friar
Karen S. Friar, Deputy County Attorney

DEVELOPER

Donald Strauch
Signature

DONALD STRAUCH
Printed name and title

Date: 06/23/2016

EXHIBIT A

SCOPE OF WORK

1. Project Overview.

1.1. Title. TMM Family Services Senior and Veterans Housing Project.

1.2. Location. Ten (10) duplex residences (a total of 20 housing units) will be constructed on parcels owned by Developer on E. Fairmont Street and E. Lee Street in Tucson, Arizona.

1.2.1. The Fairmont Street Site: Pima County Tax Parcel Nos. 122-14-0120 and 122-14-0130.

1.2.2. The Lee Street Site: Pima County Tax Parcel Nos. 122-17 3850, 122-17-384A and 122-17-384B.

1.3. Purpose: Provide a total of twenty (20) affordable rental housing units for senior households and veterans households.

1.3.1. A "senior household" is an individual age 62 or older, or a family with at least one member age 62 or older.

1.3.2. A "veteran household" is one with at least one member who has served, but is not currently serving or on active duty, in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or who served in the U.S. Merchant Marines during World War II.

1.3.3. "Low-income" is a household income at or below 80% Area Median Income ("AMI").

1.3.4. "Very-low income" at or below 50% Area Median Income AMI.

1.3.5. Of the 20 units:

1.3.5.1. All will be rented exclusively to income-qualified (as set forth below) senior or veteran households.

1.3.5.2. Thirteen (13) units will be rented to low-income senior or veteran households.

1.3.5.3. Seven (7) units will be reserved for very-low income senior or veteran households. These 7 units will be specifically attributed to the Pima County HOME Program ("the HOME-assisted units").

1.4. Funding.

1.4.1. Along with the County HOME funds provided pursuant to this Agreement, Developer warrants that it has secured sufficient funds from other sources, which may include Pima County General Obligation Bond funds, to complete the entire 20 units.

1.4.2. The provision of HOME funds under this Agreement is contingent upon the satisfactory completion of an environmental review by the City of Tucson as set forth in 24 CFR §92.352 and receipt by County of proof of same.

2. Activities.

2.1. Environmental Review. Developer must make arrangements with the City of Tucson, Housing and Community Development Department, Community Development Division for the conduct and completion of the environmental review of the Fairmont Street Site and the Lee Street Site. HOME funds are not committed and no construction can begin, and none will be reimbursed, unless and until the environmental review is completed and satisfactory for the construction of HOME-funded units.

2.2. Housing Units. In accordance with the designs submitted to County and the City of Tucson on March 1, 2016 (County G.O. Bond Application) and May 28, 2016 (HOME Program Application), Developer will:

2.2.1. Design and construct ten (10) duplexes for a total of twenty (20) affordable rental units:

2.2.1.1. Ten (10) units will be constructed on the Fairmont Street Site; and

2.2.1.2. Ten (10) units will be constructed on the Lee Street Site.

2.2.2. Each unit will meet the following specifications:

2.2.2.1. All units will:

2.2.2.1.1. Have two bedrooms and two baths with approximately 817 square feet of living area;

2.2.2.1.2. Be Energy Star® qualified and have Energy Star® rated appliances and lighting;

2.2.2.1.3. Have open floor plans to accommodate walkers, wheelchairs and other mobility aids; and

2.2.2.1.4. Meet applicable state and local codes, ordinances, and zoning requirements including any applicable disaster mitigation standards.

2.2.2.2. In addition to the requirements set forth in paragraph 2.2.2.1 above, ten (10) of the units will have accessible kitchens and baths.

2.3. Construction. Developer must:

2.3.1. Obtain all necessary zoning approvals, permissions, building permits and other required permits.

2.3.2. Provide construction management of and supervise all aspects of the Project.

2.3.3. Ensure that construction work meets all standards and specifications set forth herein and local, federal requirements for HOME-funded project.

2.3.4. Secure the construction sites from vandalism and keep the grounds free of trash and construction debris.

2.3.5. Complete the construction of and obtain the necessary certificate(s) of occupancy for the Project **no later than one (1) year from the effective date of this Agreement.**

2.4. Marketing.

2.4.1. All marketing efforts must conform to affirmative fair marketing guidelines found at 24 CFR Part 92.351. Additionally, Developer will develop, maintain and adhere to an **Affirmative Marketing Plan** ("the Marketing Plan") throughout the Affordability Period. A copy of the Marketing Plan must be provided to County ninety (90) days prior to the initiation of marketing activities.

2.4.2. Developer will:

2.4.2.1. Begin marketing the Project at least 90-days before construction is completed.

2.4.2.2. Following Fair Housing Act requirements, market the Project in a manner that will reach the targeted senior and veteran populations.

2.4.2.3. Contact multiple available resources to reach potential tenants. Resources may include, but are not limited to:

2.4.2.3.1. Community organizations;

2.4.2.3.2. Housing counseling agencies;

2.4.2.3.3. Places of worship;

2.4.2.3.4. Social service centers:

2.4.2.3.5. Tucson Pima Coalition to end Homelessness;

2.4.2.3.6. Homeless centers and shelters;

2.4.2.3.7. Employment centers;

2.4.2.3.8. Medical service providers; and

2.4.2.3.9. Fair housing organizations.

2.4.2.4. Include the Equal Housing Opportunity logo, slogan or statement in all advertisements.

2.4.2.5. Prominently display Equal Opportunity Fair Housing posters, in English and Spanish, in housing counseling and leasing offices. The posters are available on HUD's websites: www.hud.gov/offices/fheo/promotingfh/928-1.pdf (English) and www.hud.gov/offices/fheo/promotingfh/928-1a.pdf (Spanish).

2.4.2.6. Advertise in minority-owned newspapers, on minority radio and/or television stations and with other local and affiliate newspapers, television and radio stations.

2.4.2.7. Comply with the marketing and rental requirements set forth in the "Declaration of Covenants, Conditions and Restrictions for TMMFS Senior Rental Housing Project" attached to this Contract as **Exhibit E**.

2.5. Rental of the HOME-Assisted Units during the Affordability Period.

2.5.1. As set forth in paragraph 1.3.5 above, 7 of the 20 units in the Project must be designated as HOME-assisted and rented to senior or veteran households with household incomes at or below 50% AMI.

2.5.2. These HOME-assisted units will be considered "floating" units as defined in 24 CFR §92.252(j).

2.5.3. For the HOME-assisted units, Developer will:

2.5.3.1. In accordance with HOME-guidelines, verify household composition and income;

2.5.3.2. Ensure that, at the time the lease is signed, household income does not exceed 50% AMI;

2.5.3.3. Comply with rent and income limits set forth in the most current Schedule of HOME Program Rent Limits, Utility Allowances and HOME Program Income Limits issued by the Consortium. For reference, the 2016 HOME Program Limits are set forth herein as Attachment 3 to **Exhibit E**. These 7 units must be rented at Low HOME Rents, less the applicable Utility Allowance approved by County.

2.6. Annual tenant recertification and rent adjustment for the HOME-assisted units during the Affordability Period.

2.6.1. In accordance with HUD eligibility guidelines, Developer must annually review household income and rent for all tenants in the HOME-assisted units.

2.6.2. If, at the time of the annual review, a tenant's household income exceeds 50% AMI (Low HOME Program income limits):, the following conditions apply:

2.6.2.1. The lease may not be terminated or otherwise restricted from renewal, except if tenant choses to move from the Project;

2.6.2.2. Rent may be increased up to, but not in excess of, 30% of the adjusted gross household income;

2.6.2.3. To ensure continued compliance with HOME requirements, Developer must:

2.6.2.3.1. Immediately designate the next unit, comparable to the unit occupied by the household whose income exceeds the HOME limits, that becomes vacant in the Project as a HOME-assisted unit subject to the very-low household income requirements;

2.6.2.3.2. Affirmatively market the newly designated HOME-assisted unit to very-low income senior and veteran households; and

2.6.2.3.3. Follow the current HUD HOME Rents, Utility Allowance, and HUD Income Limits, as provided by County, for the newly designated HOME-assisted units.

2.7. County activities. County will provide Developer with:

2.7.1. Technical Assistance as needed to carry out HOME program objectives.

2.7.2. Legal documents, including deed of trust and promissory note that will be used to secure the HOME funds and compliance with HUD HOME Program regulations during the 20-year HOME Affordability Period.

3. Project Management and Operations.

3.1. Plans and Criteria.

3.1.1. **Prior to any payments being made under this Agreement**, Developer will develop, provide County with a copy of, and comply with the following plans and criteria in accordance with all requirements of the HUD HOME rules and regulations, the Fair Housing Act and the terms of this Agreement:

3.1.1.1. Affirmative Marketing Plan;

3.1.1.2. Resident Selection Criteria;

3.1.1.3. Lease (subject to Part II, Paragraph I – Tenant Protections of the CC&Rs set forth in Exhibit E);

3.1.1.4. Tenant Grievance Procedures;

3.1.1.5. Tenant Participation Plan; and

3.1.1.6. Operating Procedures.

3.1.2. Developer will maintain and adhere to such plans and criteria for the duration of the Affordability Period.

3.1.3. The policies and criteria outlined in paragraph 3.1.1 above may be updated or amended from time to time, so long as any amendment or change complies with HUD HOME rules and regulations, Fair Housing Act requirements and the terms of this Agreement. A copy of any updated or amended policy or criteria must be provided to County for review prior to implementation.

3.2. Rental Operations. During the Affordability Period, Developer will:

3.2.1. Maintain and operate all twenty units in the Project as rental housing for senior and veteran households with incomes set forth in in this Exhibit A.

3.2.2. For the retention period set forth in Section 20.0 of this Agreement, retain all evidence of HOME Program compliance, including, but not limited to:

3.2.2.1. Documentation of tenant eligibility;

3.2.2.2. Rents charged and collected:

3.2.2.3. Utility allowances provided;

3.2.2.4. Lease agreements; and

3.2.2.5. Affirmative marketing efforts.

3.2.3. Administer the leases and manage the use of the properties.

3.2.4. Collect rents.

3.2.5. Resolve resident disputes in accordance with the Tenant Grievance Procedures.

3.2.6. Ensure that any vacant unit is secured and protected from vandalism.

3.2.7. Establish and maintain a schedule for property maintenance to ensure all units meet HUD HQS and applicable state, county and local codes and standards at all times.

3.2.8. Maintain and repair the units within the Project, including structures, physical plant, sidewalks, parking areas and landscaping, to ensure marketability and prevent deterioration, destruction or wasting. Keep grounds free of trash and debris.

4. Project goal/predicted outcomes:

4.1. Goal: Complete the construction of the Project and rent seven (7) units to very low income senior and veteran households and the remaining 13 units to low-income senior and veteran households.

4.2. Predicted outcomes. Affordable housing will be provided to very-low and low-income senior and veteran households for twenty (20) years.

5. Public benefit – HOME National Objective and Eligible Activity.

Upon completion of the Project, the expenditure of HOME funds attributed to the construction of seven (7) HOME assisted housing units will meet the HOME Program objective to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary and affordable housing with primary attention to very-low-income senior and veteran households (24 CFR 92.203 and 92.252).

6. Affordability Period.

6.1. For a period of twenty (20) years after the date of occupancy of the last of the seven (7) HOME-assisted units occupied, based on the date the HUD HOME Program Completion Report is submitted with all the tenant data for each of the seven HOME-assisted units.

6.2. The Affordability Period shall be secured through regulatory agreements against the properties in favor of Pima County in the forms set forth in **Exhibit E** and **Exhibit F. These regulatory agreements must be executed and recorded in the Office of the Pima County Recorder prior to any payments being made under this Agreement.**

7. Annual monitoring and Reports.

7.1. Developer will cooperate with County HOME compliance monitoring activities throughout the Affordability Period.

7.2. During the Affordability Period, on or before January 31st of each year, for the previous calendar year, Developer will provide County with the following:

7.2.1. HUD Rent and Occupancy Report attached as Exhibit G;

7.2.2. Affirmative Marketing Report attached as Exhibit H-1;

7.2.3. Affordability Certification Report attached as Exhibit H-2;

7.2.4. Audited Financial Statements of the Developer; and

7.2.5. Current Certificates of Insurance including Pima County as Additional Insured as described in Section 6.0 of the main Agreement.

7.3. County will schedule and conduct annual tenant file and site monitoring required by HUD HOME Program regulation at 24 CFR Part 92 following receipt of the annual reports delineated in paragraph 7.1 above.

7.4. All reporting and monitoring provisions will survive the termination of this Agreement.

8. Budget. County will pay Developer for actual costs incurred provided Developer has complied with all conditions precedent to payment set forth in the Agreement and this Exhibit A.

Description	Allocated HOME funds	Retention
struction costs	$698,000.00	$69,800.00
ronmental review	$ 10,000.00	$1,000.00
TOTAL	**$708,000.00**	**$70,800.00**

Final payment will be made after receipt of the HOME Program Rental Completion Report attached as **Exhibit D**.

END OF EXHIBIT A

EXHIBIT B
Section 3 Requirements

THIS PROJECT IS IN WHOLE OR IN PART FEDERALLY FUNDED AND THE SUCCESSFUL BIDDER WILL BE REQUIRED TO ADHERE TO SECTION 3 PROVISIONS.

The County will monitor compliance with such provisions and standards on behalf of the County of Pima. The successful bidder will be required to complete the following forms in order to comply. A brief explanation of the form and when the form is to be submitted to County of Pima is listed below. Should you have any questions concerning Section 3 or the forms to be submitted, please feel free to contact Marcos Ysmael, Project Coordinator.

A. **SECTION 3 CLAUSE** (2 pages – Attachment 1) This form needs to be included in all bid documents for Section 3 covered projects.

B. **SECTION 3 ASSURANCE** (1 page Attachment 2) This form is to be completed by the Prime Contractor and **submitted as a part of the bid package or within 3 days of contract award.** Completion of this form provides assurance that the Prime Contractor will comply with Section 3 requirements.

C. **ESTIMATED PROJECT WORK FORCE BREAKDOWN** (1 page)

   This form is to be completed by the Prime Contractor and **submitted as a part of the bid package or within 3 days of contract award.** This form identifies additional positions needed to complete the Section 3 covered project.

D. **SECTION 3 BUSINESS SELF-CERTIFICATION** (1 page)

   This form is to be completed by the Prime Contractor and Sub-Contractors (if applicable), and **submitted as a part of the bid package or within 3 days of contract award.** The bidder completes this form to qualify as a Section 3 business concern.

E. **SECTION 3 RESIDENT SELF-CERTIFICATION** (1 page)

   This form is to be completed by newly hired employee(s) of the Prime Contractor and/or Sub-Contractor if applicable, and **submitted as a part of the bid package, within 3 days of contract award, or as employees is newly hired through the life of the contract/project.**

   The bidder completes this form to qualify as a Section 3 business concern.

F. **TUCSON/PIMA COUNTY INCOME LIMITS - 80% AREA MEDIAN INCOME** (1 page)

G. **JOB COMPLETION/END OF YEAR REPORT** (1 page)
   This form is to be submitted by the Prime Contractor at the completion of the Project and/or by September 30 for a multi-year project. The final payment to the Contractor will not be disbursed until this report is submitted at job completion.

EXHIBIT B - ATTACHMENT 1

I. Section 3 Clause

All Section 3 covered contracts shall include the following clause (referred to as the Section 3 clause):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S~.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible; be directed to low- and very low-income persons, particularly persons who are of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR, Part 135, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractors' commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR, Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR, Part 135.

E. The contractor will certify that any vacant employment positions including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR, Part 135 require employment opportunities to be directed, were not filled to circumvent the contractors obligations under 24 CFR, Part 135.

F. Noncompliance with HUD's regulations in 24 CFR, Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b)~

II. Providing Other Economic Opportunities

a) *General.* In accordance with the findings of the Congress, as stated in Section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with Section 3-covered assistance.

b) *Other training and employment related opportunities.* Other economic opportunities to train and employ Section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring Section 3 residents in management and maintenance positions within other housing developments; and hiring Section 3 residents in part-time positions.

c) *"Other Business Related Economic Opportunities*

1) A recipient or contractor may provide economic opportunities to establish stabilize or expand Section 3 business concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of Section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR, Part 963 regarding HA contracts to HA resident owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-Section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

2) A *Section 3 joint venture* means an association of business concerns, one of which qualifies as a Section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 business concern:

(i) Is responsible for a clearly-defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

III. Certifications and Reporting:

The attached certifications must be submitted upon contract execution, prior to commencing contract activities and the attached annual report is required annually and prior to final draw.

_____ _____

Signature Date

EXHIBIT B - ATTACHMENT 2

THIS DOCUMENT IS TO BE SUBMITTED BY THE BIDDER WITH THE BID DOCUMENTS OR WITHIN 3 DAYS OF CONTRACT AWARD

SECTION 3 ASSURANCE

1. I, the undersigned, _____, as official representative of _____
   (Printed Name) (Contractor)
   agree to comply with Section 3 requirements, to include recordkeeping and reporting, for the

   _____. It is understood that failure to comply may result in the
   (Project)
   following sanctions: Cancellation, Termination or Suspension of this contract in whole or in part.

2. Prime Contractor

   a. The number of positions needed in this project: _____

   Details of occupational categories provided in Attachment B _____ (Yes)

   b. The number of these positions to be filled by regular, permanent employees: _____

   c. The number of positions projected to be filled by low income area residents: _____

   Details of occupational categories provided in Attachment B _____ (Yes)

3. Subcontractors/Vendors

   a. The number of subcontractors projected to be utilized for this project: _____

   b. The number of subcontractors projected to be Section 3 businesses: _____

   c. The number of businesses/suppliers projected to be utilized: _____

   Dollar amount: $_____

   d. The number of businesses/suppliers projected to be Section 3 businesses/suppliers: _____

   Dollar amount: $_____

_____ _____
Authorized Signature Date

EXHIBIT B - ATTACHMENT 3

ESTIMATED PROJECT WORK FORCE BREAKDOWN

THIS DOCUMENT IS TO BE SUBMITTED BY THE BIDDER WITH THE BID DOCUMENTS OR WITHIN 3 DAYS OF CONTRACT AWARD

Section 3

Job Category	Total Estimated Positions Needed for Project	No. of Positions Occupied by Permanent Employees	Number of Positions Not Occupied	No. of Positions to be Filled with Section 3 Residents	Approximate Hiring Date
Supervisor					
Professional					
Technical					
Office/Clerical					
Others					
TRADE:					
Journeyman					
Apprentices					
Trainees					
Others					
TRADE:					
Journeyman					
Apprentices					
Trainees					
Others					
TOTALS					

Section 3 Resident

Individual residing within the Section 3 Area whose family income does not exceed 80% of the median income in the Metropolitan Statistical Area or the county if not within a MSA in which the Section 3 covered project is located. See attached income schedule.

Person Completing Form | Date | Company | Telephone Number

Company Address | Project Name and Number | Telephone Number

EXHIBIT B - ATTACHMENT 4

SECTION 3 BUSINESS SELF-CERTIFICATION

A. Basis for Self-Certification

The _____, located at _____
(Name of Business) (Address)

hereby certifies that it is a Section 3 business, as defined by HUD, on the basis of the following:

(Check All Applicable)

1) _____ 51% or more ownership by Section 3 residents;

2) _____ At least 30% of the current permanent, full-time employees are Section 3 residents or were Section 3 residents at the time they were hired (within the past three years);

3) _____ Is committed to subcontracting more than 25% of the total dollars awarded by [*grantee*] to business concerns that meet the qualifications indicated in 1) or 2) above.

B. Certifications

I, the undersigned, hereby certify that:

1) I have the legal authority to make these certifications on behalf of _____;
(Name of Business)

2) Documentation exists to verify the basis for the Self-Certification indicated in A. above;

3) This documentation will be made available to the grantee, the State of Arizona Department of Housing, HUD or its designated representatives, during normal business hours, upon request;

4) This documentation will be maintained for at least five years after completion of the requirements of the contract provided by the grantee;

5) The information provided in A. above is true and accurate to the best of my knowledge; and

6) I am aware that both I and the business identified above, are liable to civil and criminal penalties for willful falsification of any of the information provided in this document.

_____ _____
Signature Date

_____ _____
Printed Name Title

EXHIBIT B - ATTACHMENT 5

SECTION 3 RESIDENT SELF-CERTIFICATION

Company Name _____

Company Address _____

Employee Name _____

Employee Position _____ Hire Date _____

Employee Address _____

Employee's Household income is (check one box):

☐ At or below the level shown below for their household; or

☐ Above the level shown below for their household.

Number of Household Members	Annual Household Income (Including Income of all adults in Household)
1	$31,750
2	$36,300
3	$40,850
4	$45,350
5	$49,000
6	$52,650
7	$56,250
8+	$59,900

** Note: As new income limits are published annually by HUD, the Section 3 forms will need to change accordingly.*

I certify that I have looked at the income levels listed above, and certify that the information presented in this Certification form is true and accurate to the best of my knowledge and belief. I understand that providing false information constitutes an act of fraud and may result in punishment.

_____

Signature of Employee Print Employee Name Date

EXHIBIT B - ATTACHMENT 6

Section 3 Job Completion Report for Contractors: FY 2015-2016 **(To be completed by the Contractor for Section 3 Projects)**

Project: _____ **Prime Contractor:** _____ **Contract #:** _____

New Employees (Hired within the last 12 months) Note: Section 3 Employees fall under the following income levels

Household	1	2	3	4	5	6	7	8+
Income	$31,750	$36,300	$40,850	$45,350	$49,000	$52,650	$56,250	$59,900

Employee Name	Job Title	Date Hired	Number of Hours Worked on Contract	Source of Hire AZ@Work-Pima County or Other"	Is the Employee Section 3 Eligible?	Type of Job

Note: All contractors and subcontractors must submit a "Section 3 Business Certification" sheet at time contract is awarded

For Section 3 covered construction projects, contractors will not receive final payment until the annual report has been submitted.

Certification and Signatures: I certify that the information listed above is true and complete to the best of my knowledge. If Section 3 requirements are not met, contractor agrees to meet with Pima County in good faith to determine appropriate course of action to achieve Section 3 Compliance. Providing false, misleading or incomplete information may result in the termination of your contract and possible debarment from future Contracts, and may constitute an act of Fraud.

Signature **Title** **Date**

_____ _____ _____

EXHIBIT C

PAYMENT REQUEST FORM & MONTHLY REPORT

TMM FAMILY SERVICES, INC. – TMM FAMILY SERVICES SENIOR HOUSING PROJECT

For the Month of _____, 20__

HOME Contract No. _____ **Request for Payment**				
Description	**Total HOME Budget**	**HOME Funds Expended This Month**	**HOME Funds Expended Prior Month(s)**	**HOME Funds Expended to Date**
Direct Construction	$698,000.00			
Environmental Review	10,000.00			
Total	**$708,000.00**			

☐ **Attach a detailed project development budget** showing all costs incurred to date under all funding sources. A copy of the most current Application and Certification for Payment [AIA Document G702] or other similar form will meet this requirement.

ADDITIONAL PROJECT INFORMATION FOR REPORTING PERIOD:

- Monthly Activity Summary:

- Milestones completed:

- Problems encountered:

- Changes requested for Construction or Reimbursement Schedule:

EXHIBIT D

HUD HOME Program Rental Completion Report Form 40097

A fillable form is available on HUD's website at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud4

Rental Completion Report
HOME Program

U.S. Department of Housing and Urban Development
Office of Community Planning And Development

OMB Approval No. 2506-0171 (Exp. 8/31/2009)

Mark the appropriate box: ☐ Original Submission ☐ Revision

Part A: Activity Information

1. Activity Number	2. Name of Participant	3. Participant's Tax ID Number

4. CHDO Tax ID Number	5. Name & Phone Number (including Area Code) of person completing form

6. Type of Property (check one):	7. Does Activity Have Rent Exception?	8. Mixed Income Activity?	9. Mixed Use Activity?
(1) ☐ Condominium (2) ☐ Cooperative (3) ☐ SRO (4) ☐ None of the Above	(1) ☐ Yes (2) ☐ No	(1) ☐ Yes (2) ☐ No	(1) ☐ Yes (2) ☐ No

Part B: Financial Structure of Activity

Type of Activity Financed (check one):
(1) ☐ Rehabilitation Only (3) ☐ Acquisition Only (5) ☐ Acquisition & New Construction
(2) ☐ New Construction Only (4) ☐ Acquisition & Rehabilitation

Activity Costs

1. HOME Funds

	Annual Interest Rate %	Amortization Period Yrs.	
(1) Direct Loan			$
(2) Grant			$
(3) Deferred Payment Loan (DPL)			$
(4) Community Housing Development Organization (CHDO) Loan			
a. TA Loan			$
b. Seed Loan			$
Total CHDO Loan (Total items 4a and 4b)			$
(5) Other			$
Total HOME Funds (Total items 1-5)			$

2. Public Funds

(1) Other Federal Funds	$
(2) State/Local Appropriated Funds	$
(3) State/Local Tax Exempt Bond Proceeds	$
Total Public Funds (Total items 1-3)	$

3. Private Funds

	Annual Interest Rate %	Amortization Period Yrs.	
(1) Private Loan Funds			$
(2) Owner Cash Contribution			$
(3) Net Syndication Proceeds (No low income tax credit)			$
(4) Private Grants			$
Total Private Funds (Total items 1-4)			$

4. Low Income Tax Credit Syndication Proceeds	$
5. HOME Program Income	$
6. Total Activity Costs (Total All Items)	$

Part C: Household Characteristics Complete one line for each unit assisted with HOME funds. Enter one code only in each block. If the activity is a 1-4 unit owner occupied rental activity, also provide tenant characteristics. For activities which include multiple addresses, complete a separate Household Characteristics (Part C) for each address.

Activity Address	Activity Number

Unit No.	No. of Bedrooms	Occupancy	Tenant Contribution	Subsidy Amount	Total Rent	% of Area Median	Hisp	Race of Head of Household	Size of Household	Head of Household	Rental Assistance

No. of Bedrooms Code
1 – 1 Bedroom
2 – 2 Bedrooms
3 – 3 Bedrooms
4 – 4 Bedrooms
5 – 5 or more Bedrooms

Occupancy Code
1 – Tenant
2 – Owner
9 – Vacant

% of Area Median Code
1 – 0 – 30%
2 – 30 – 50%
3 – 50 – 60%
4 – 60 – 80%

Hispanic
y – yes
n – no

Race of Head of Household Code
11 – White
12 – Black or African American
13 – Asian
14 – American Indian or Alaska Native
15 – Native Hawaiian or Other Pacific Islander
16 – American Indian or Alaska Native & White
17 – Asian & White
18 – Black or African American & White
19 – American Indian or Alaska Native & Black or African American
20 – Other Multi Racial

Head of Household Code
1 – Single/non-Elderly
2 - Elderly
3 – Related/Single Parent
4 – Related/Parent
5 - Other

Rental Assistance Code
1 – Section 8
2 – HOME TBRA
3 – Other
4 – No Assistance

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

The HOME statute imposes a significant number of data collection and reporting requirements. This includes information on assisted properties, on the owner or tenants of the properties, and on other programmatic areas. The information will be used: 1) to assist HOME participants in managing their programs; 2) to track performance of participants in meeting fund commitment and disbursement deadlines; 3) to permit HUD to determine whether each participant meets the HOME statutory income targeting and affordability requirements; and 4) to permit HUD to determine compliance with other statutory and regulatory program requirements. This data collection is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act or related authorities. Access to Federal grant funds is contingent on the reporting of certain activity-specific elements. Records of information collected will be maintained by the recipients of the assistance. Information on activities and disbursements of grant funds is public information and is generally available for disclosure. Recipients are responsible for ensuring confidentiality when public disclosure is not required.

Sensitive Information: Some of the information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. Recipients are responsible for ensuring confidentiality when public disclosure is not required.

Instructions for Completing the Rental Completion Report

HOME Program

Read the instructions for each item carefully before completing the form. Use a typewriter or print carefully with a ballpoint pen. Prepare an original and one copy. Retain the copy.

Applicability. This report is to be completed for each rental activity assisted with HOME funds. It is to be used only for an activity having no owner occupants or for an activity with an owner occupant and 4 or more rental units. **Note:** Completion of an activity with one owner occupant and zero to three rental units should be reported on the Homebuyer/Homeowner Rehab Completion Report. Completion of an activity with two or more homeowners should be reported on the Multi-Address Completion Report.

Timing. The Rental Completion Report data are to be input in IDIS within **120 days** of requesting the final disbursement of HOME funds for the activity. If the completion report data are not input within 120 days of the final disbursement for the activity, the PJ's (or State Recipient's) access to the HOME IDIS System may be suspended. An amended completion report should be submitted when all units initially reported vacant are occupied, and the change should be highlighted in yellow.

Part A: Activity Information

1. **Activity Number.** Enter the activity number assigned by IDIS.
2. **Name of Participant.** Enter the name of the participant or, for State recipient activities, the name of the State recipient.
3. **Participant's Tax ID Number.** Enter the Tax (Employer) Identification Number for the participant; for a State recipient project, enter the State recipient's Tax ID Number.
4. **CHDO Tax ID Number.** Complete only for activities assisted with funds reserved for Community Housing Development Organizations (CHDOs). Enter the Tax (Employer) Identification Number for the CHDO.
5. **Name & Phone Number of Person Completing Form.** Enter the name and phone number, including area code, of the person to contact for further information regarding this report form.
6. **Type of Property.** Check one box to indicate the type of property assisted:
   (1) Condominium
   (2) Cooperative
   (3) Single Room Occupancy
   (4) None of the Above
7. **Rent Exception.** HUD may adjust the qualifying rent established for an activity under §92.252(g) if HUD finds an adjustment is necessary to maintain the financial viability of the activity. Mark one box to indicate whether or not the activity has a rent exception.
8. **Mixed-Income Activity.** Mark "yes" where less than 100 percent of the activity's housing units qualify as affordable housing as defined in section 92.252 of the HOME regulations. Mark "no" if the activity is not mixed-used.
9. **Mixed-Use Activity.** Mark "yes" for an activity that is designated in part for uses other than residential but where residential living space must constitute at least 51 percent of the activity space. Mark "no" if the activity is not mixed-use.

Part B: Financial Structure of Activity

1. **Type of Activity Financed.** Mark only one of the 5 available boxes for naming the HOME-assisted activity. **Note:** Even though the property may have HOME Tenant-Based Rental Assistance, do not include the TBRA in Part B.
   (1) **Rehabilitation Only.** A HOME-assisted rehabilitation activity that did not include acquisition of real property. Such activities may have involved (a) repairs or improvement of residential unit(s) to bring the unit(s) up to the property standards required by 24 CFR 92.252; (b) the reconfiguration of a structure to reduce the total units in order to increase the number of large family units, (c) the addition of a room or rooms (e.g., bedroom or bathroom) outside the existing walls for purposes of meeting occupancy or code standards and (d) the adding of a unit or units within the existing structure.
   (2) **New Construction Only.** Any activity that involved (a) the addition of units outside the existing walls of the structure and (b) the construction of a new residential unit(s). **Note:** When activities have combined new construction in one building(s) on one parcel of land, the projects, by type of activity (i.e. rehabilitation or new construction), must be administratively set up as separate activities in IDIS.
   (3) **Acquisition Only.** Acquisition of a structure that received a certificate of occupancy at least 13 months before acquisition, which did not

require rehabilitation and which is being used to provide affordable rental housing.

(4) **Acquisition and Rehabilitation.** A HOME-assisted rehabilitation activity, which included the acquisition of real property.

(5) **Acquisition and New Construction.** A HOME-assisted new construction activity, which included the acquisition of real property. This includes acquisition of a structure that has received an initial certificate of occupancy within a one-year period prior to acquisition.

Activity Costs. Include all HOME funds used for the activity and all other funds (public and private) with one exception. ***Do not double count.*** If private funds are used for construction financing and those funds are later replaced by permanent financing, ***do not report both.*** Report all HOME funds expended on the activity. ***(Note: Federal regulations specifically prohibit paying back HOME funds with HOME funds.)*** For funds other than HOME, to the extent a choice must be made to avoid double counting, report permanent financing rather than construction financing. The total amount reported on line 6 of Part B should be the total cost of the activity. The total amount of HOME funds reported in the block titled "Total HOME funds (Total Items (1)-(5)" of Part B must equal the total amount disbursed through IDIS for this activity.

1. **HOME Funds.** Include HOME program income on line 5, below, title "HOME Program Income" only. Do not include HOME program income in any of the following 5 HOME categories.
   (1) **Direct Loan.** Enter the amount of HOME funds provided for this activity in the form of a direct loan. Enter the loan's interest rate and amortization period. If there are multiple loans, enter the interest rate and term of the largest loan.
   (2) **Grant.** Enter the amount of HOME funds provided without any repayment requirements. (**Note:** A grant may be used to reduce the principal amount borrowed, a principal reduction payment, or the effective interest rate, an interest subsidy payment, on a privately originated loan.)
   (3) **Deferred Payment Loan (DPL).** Enter the amount of HOME funds provided through loans where payment of principal and interest is deferred until a future time and enter the interest rate and amortization period, if any. A DPL is some times called a conditional grant (e.g., repayment is required when the property is sold, or is forgiven if the owner does not sell the property for a specified number of years or repayment of principal and interest starts after the bank loan is repaid.)
   (4) **Community Housing Development Organization (CHDO) Loan.**
      a. **Technical Assistance (TA) Loan.** Enter the amount of HOME funds provided as a CHDO TA loan for the activity. Reference 24 CFR 92.301(a).
      b. **Seed Money Loan.** Enter the amount of HOME funds provided as a CHDO seed loan. Reference 24 CFR 92.301(b).

   Total CHDO Loan. Enter the total of the amounts entered on cited on 4a and 4b.
   (5) **Other.** Enter the total amount of HOME funds provided for subsidy funding that is other than the type of loan/grant assistance identified in the above items listed as (1) through (4).

   Total HOME Funds. Enter the total of items (1) through (5) as the amount of HOME funds expended.
2. **Public Funds.** Enter in blocks (1) through (3), the total amount of public funds expended.
   (1) **Other Federal Funds.** Exclude any HOME funds expended.
   (2) **State/Local Appropriated Funds.**
   (3) **State/Local Tax Exempt Bond Proceeds.**

   Total Public Funds. Enter the total of items (1) through (3) as the amount of Public Funds expended.
3. **Private Funds.**
   (1) **Private Loan Funds.** Enter the amount of all of the costs that have been paid with funds obtained from private financial institutions, such as banks, savings and loans, and credit unions, and enter the interest rate and amortization period of the loan. If there are multiple loans, enter the interest rate and term of the largest loan. **(Do not double count.)**
   (2) **Owner Cash Contributions.** Enter the amount of all cash contributions provided by the project owner.
   (3) **Net Syndication Proceeds.** Enter the net amount of syndication proceeds, excluding low-income tax credits, provided in financing this activity.
   (4) **Private Grants.** Enter the amount of cash contributions provided by private organizations, foundations, donors, etc.

   Total Private Funds. Enter the total of items (1) through (4) as the amount of Private Funds expended.
4. **Low Income Tax Credit Syndication Proceeds.** Enter the total amount of syndicated Low Income Tax Credits provided.
5. **HOME Program Income.** Enter the total amount of funds provided from HOME repayment income.
6. **Total Activity Cost.** Enter the sum of totals for HOME funds, Public funds and Private funds, Low Income Tax Credit Syndication Proceeds, and HOME Program Income. (Totals from above lines 1 through 5.)

Part C. Household Characteristics.

Complete one line for each unit assisted with HOME funds and enter one code only in each block. For activities which include multiple addresses, complete Part C for each address. For an unoccupied unit, enter unit number, number of bedrooms and occupancy code as 9 vacant.

Unit Number. Enter the unit number of each unit assisted with HOME funds.

Number of Bedrooms. Enter "0" for a single room occupancy (SRO) unit or for an efficiency unit, 1 for 1 bedroom, 2 for 2 bedrooms, 3 for 3 bedrooms, 4 for 4 bedrooms, and 5 for 5 or more bedrooms.

End of Exhibit D

Exhibit E

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
TMM FAMILY SERVICES SENIOR RENTAL HOUSING PROJECT

OWNER: TMM Family Services, Inc., an Arizona non-profit corporation and operating in Pima County, Arizona.

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

PROPERTY: 3102 and 3108 E. Fairmont Street, Tucson, AZ 85716 (Fairmont St. site) and; 3131, 3135, 3137, 3145, 3147 and 3149 E. Lee Street, Tucson, AZ 85716 (Lee St. site), specifically described in Attachment 1

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

RECITALS

A. Owner applied for grant funds available through the U.S. Department of Housing and Urban Development ("HUD") HOME Investment Partnerships Program ("HOME") as defined in Part 92 of title 24 of the Code of Federal Regulations, as amended, to construct new rental housing units for very low- and low-income seniors and veterans in Pima County.

B. County agreed to loan Owner HUD HOME funds in the amount of $708,000.00 ("the HOME funds"), under Pima County Contract No. _____, from the allocation of HOME Program monies County receives as a member of the Tucson-Pima County HOME Consortium.

C. Owner must use the HOME funds to construct a total of twenty (20) affordable rental housing units for low-income for senior and veteran households. Seven (7) of the 20 units must be reserved with incomes at or below 50% of the Area Median Income ("the HOME-assisted units").

D. The HOME-assisted units will be subject to several restrictions and regulations established by the HUD, and set forth with particularity in the Contract between Owner and County, for at least 20 years.

NOW THEREFORE, Owner hereby makes this Declaration and declares that the covenants, conditions and restrictions set forth herein shall run with the land:

1. Definitions

The following words, phrases or terms used in this Declaration will have the following meanings:

Adjusted income	Annual household income, adjusted pursuant to 24 CFR § 5.611, of tenants or potential tenants.
AMI	Area Median Income established by HUD
Annual income	As defined in 24 CFR § 5.609
Declaration	This Declaration of Covenants, Conditions and Restrictions
Floating HOME units	As defined in 24 CFR § 92.252(j.)
High HOME rent	Rent published by HUD based on the lower of 30% of 65% of adjusted area median income and fair market rent
HOME-assisted units	Residential units constructed using HOME funds attributed to County as part of the Tucson/Pima County HOME Consortium
HOME funds	Monies available for the Project pursuant to 24 CFR Part 92 including repayments and interest or other return on the investment of such funds
HOME Program	HOME Investment Partnerships Program set forth in 24 CFR Part 92, as it currently exists and as it may be amended in the future
HQS	HUD Housing Quality Standards set forth in 24 CFR §982.401
HUD	United States Department of Housing and Urban Development
Loan Agreement	Collectively, Pima County Contract No. _____ between Owner and City County establishing the terms and conditions for the receipt and use of the $708,000.00 of HOME funds for the Project and the Promissory Note executed by Developer setting forth the conditions for repayment of said funds.
Low HOME rent	Rent published by HUD based the lower of 30% of 50% of adjusted AMI or 30% of household's adjusted income or the high HOME rent if the low HOME rent is greater
Low income	Annual household income below 80% AMI. May be adjusted by HUD from time to time.
Over-income tenant	Current HOME-assisted unit tenant whose household income meets or exceeds 50% AMI after initial occupancy
Project	The twenty-unit, rental housing project, including seven County HOME units, located at 3102-3108 E. Fairmount Street and 3131-3149 E. Lee Street, in Tucson, Arizona subject to the terms of this Declaration.

Senior household	An individual age 62 or older, or a family with at least one member age 62 or older.
TMM Family Services Senior and Veterans Rental Project	*See* Project
UPCS	Uniform Physical Condition Standards established by HUD at 24 CFR Parts 5 and 200
Veteran household	A household with at least one member who has served, but is not currently serving or on active duty, in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or who served in the U.S. Merchant Marines during World War II. A veteran household may be an individual veteran.

2. Covenants, Conditions and Restrictions The following restrictions apply to the Project for the Affordability Period (set forth in paragraph 2.2 below):

2.1. HOME-Assisted Units: Seven (7) rental units in the Project are designated as "floating HOME-assisted units" for very-low-income households. The following conditions apply to the HOME-assisted units:

2.1.1. Each unit will have two bedrooms and two baths with approximately 817 square feet of living area;

2.1.2. Each unit will be Energy Star® qualified and have Energy Star® rated appliances and lighting;

2.1.3. Each unit will have an open floor plans to accommodate walkers, wheelchairs and other mobility aids;

2.1.4. Each unit must be leased to a senior household or a veteran household with a household income below 50% AMI at initial occupancy; and

2.1.5. One (1) unit will be fully accessible (including kitchen and baths) for persons with disabilities.

2.2. Affordability Period: The HOME-assisted units are subject to all terms, conditions and restrictions set forth in this Declaration for **twenty (20) years** from the date of first occupancy of the last HOME-assisted unit to be occupied.

2.3. Use of Property: All seven (7) HOME-Assisted units will:

2.3.1. Be rented only to seniors or veteran households with household incomes set forth in paragraph 2.1.4; and

2.3.2. Remain subject to this Declaration, the terms and conditions of the Loan Agreement and the Deed of Trust recorded in the Office of the Pima County Recorder. **The covenants set forth in these documents run with the land, regardless of any change in ownership.**

2.4. Rent Limitation: Rent for each HOME-assisted unit in the Project:

2.4.1. Must be the lesser of:

2.4.1.1. Fair market rent for existing comparable units in the area as established by HUD under 24 CFR § 888.111; or

2.4.1.2. LOW HOME rent published annually by HUD HOME Program, as noted in paragraph 2.5.

2.4.2. Must be determined by subtracting a monthly allowance for any utilities and services (excluding telephone) paid by tenant as provided in Paragraph 2.5.

2.5. Rent Schedule and Utility Allowances: In addition to the limitations set forth in paragraph 2.4, the following provisions apply to the establishment of rent for the HOME-assisted units:

2.5.1. Initial rent must be established in accordance with the **Initial Rent and Utility Allowance Schedules** attached hereto as Attachment 3.

2.5.1.1. The amounts set forth in these schedules are the maximum rents and minimum utility allowances for the HOME-assisted units throughout the Affordability Period.

2.5.1.2. HUD may amend the schedules at any time and the amended schedules will apply without need for an amendment to this Declaration. County will provide any updated rents and allowances to Owner upon publication, however, failure of County to do so, will not excuse Owner's non-compliance with the amended schedules.

2.5.1.3. If tenants are required to pay for utilities and services (other than telephone), a credit against total rent must be provided according to the utility allowances listed in Attachment 3.

2.5.2. Subsequent rent increases, if any, are subject to the following:

2.5.2.1. Owner must provide County with an explanation of the applicable gross rent amounts, household income adjustments, or the monthly allowance for utilities and services that warrant an increase;

2.5.2.2. Credit for utilities paid by tenant must conform to the Utility Allowance Schedule in effect at the time the increase is sought;

2.5.2.3. May not be increased until the end of the then current lease term;

2.5.2.4. May not be increased unless and until the new rent is approved by County; and

2.5.2.5. May not be imposed until after tenant is provided with at least 30 days' prior written notice.

2.6. Tenant Income Limitations: Owner must:

2.6.1. Determine whether each potential tenant meets household the income eligibility requirements.

2.6.2. Maintain documentation that details the household income eligibility of each tenant.

2.6.3. Not refuse to lease a HOME-assisted unit to a certificate or voucher holder under the Section 8 Program because of the status of the prospective tenant as a holder of such certificate, voucher or comparable document.

2.6.4. Not refuse to lease a HOME-assisted unit because the prospective tenant is a holder of a Rental Voucher Program certificate of family participation under 24 CFR part 887 or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program.

2.7. Increases in Tenant Income:

2.7.1. Owner must certify tenant income annually in accordance 24 CFR § 92.252 on forms approved by County.

2.7.2. Temporary non-compliance with income eligibility requirements will not jeopardize the HOME Program status of the Project, provided that such non-compliance:

2.7.2.1. Is due to an increase in the household income of an existing tenant; and

2.7.2.2. Owner is taking actions satisfactory to HUD to ensure that all vacancies are filled with income eligible households until the non-compliance is corrected.

2.7.3. Subject to the notice provisions set forth in paragraph 2.5.2, if, at the annual review, a tenant's household income exceeds 50% AMI, tenant must pay rent for the HOME-assisted that is the lesser of fair market value or 30% of the household's adjusted monthly income. However, this requirement will not apply for units with funding under 24 CFR Part 92 and allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

2.8. Property Standards: Owner must:

2.8.1. Construct and maintain the Project in accordance with all applicable state and local standards, codes, ordinances, and zoning requirements including any applicable disaster mitigation standards state and local codes;

2.8.2. Ensure continuing compliance with HQS and UPCS; and

2.8.3. Keep the Project in good repair and free of trash and debris.

2.9. Tenant Protections: All HOME-assisted units in the Project must comply with the following:

2.9.1. The lease must be for <u>not less than one year</u>, unless by mutual agreement between the tenant and Owner.

2.9.2. The following lease terms are **<u>prohibited</u>**:

2.9.2.1. <u>Agreement to be Sued</u>: Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;

2.9.2.2. <u>Treatment of the Property</u>: Agreement by the tenant that Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition,

however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit. In that event, Owner may dispose of this personal property in accordance with state law;

2.9.2.3. Excusing Owner from Responsibility: Agreement by the tenant not to hold Owner or Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

2.9.2.4. Waiver of Notice: Agreement of the tenant that Owner may institute a lawsuit without notice to the tenant;

2.9.2.5. Waiver of Legal Proceedings: Agreement by the tenant that Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

2.9.2.6. Waiver of a Jury Trial: Agreement by the tenant to waive any right to a trial by jury;

2.9.2.7. Waiver of right to appeal court decision: Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

2.9.2.8. Tenant Chargeable with Cost of Legal Actions regardless of Outcome: Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

2.9.3. Termination of Tenancy:

2.9.3.1. Owner may not terminate the tenancy or refuse to renew the lease of a tenant of a HOME -assisted unit in the Project except for:

2.9.3.1.1. A serious or repeated violations of the terms and conditions of the lease; or

2.9.3.1.2. A violation of applicable federal, state, or local laws.

2.9.3.2. Any allowed termination or refusal to renew must be preceded by Owner's service upon the tenant of at least 30 days' advance written notice specifying the grounds for the action.

2.9.4. Tenant Selection: Owner of the Project must adopt written tenant selection policies and criteria that:

2.9.4.1. Are consistent with the purpose of providing housing for seniors and veterans with household incomes at the levels set forth in paragraph 2.1.4;

2.9.4.2. Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;

2.9.4.3. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

2.9.4.4. Provide for the prompt written notification to any rejected applicant explaining the grounds for any rejection.

2.9.5. **Religious Organizations**: The Project will not be provided for rental or use to any primarily religious organizations, such as churches, for any activity including secular activities. The Project must be used exclusively by Owner for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the Project.

2.10. Affirmative Marketing: For all HOME-Assisted units in the Project:

2.10.1. Owner shall comply with the following Affirmative marketing requirements and procedures:

2.10.1.1. All correspondence and notices shall contain either the Equal Housing Opportunity logo or slogan. The logo is available on HUD's website at:

http://portal.hud.gov/hudportal/HUD?src=/library/bookshelf11/hudgraphics/fheologo

2.10.1.2. Prominently display Equal Opportunity Fair Housing Posters in English and Spanish in all leasing and housing counseling offices. The posters are available by contacting County or on HUD's website at:

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7802.pdf

2.10.1.3. Advertise availability of HOME-assisted units in minority-owned newspapers, on minority radio and/ or television stations and with other local and affiliate newspapers, television and radio stations.

2.10.1.4. Include the equal housing opportunity logo or slogan in all advertisements.

2.10.1.5. Solicit applications for vacant HOME-assisted units from the senior and veteran population, particularly to persons who are least likely to apply for the HOME-assisted units absent special outreach efforts. In general, persons who are not of the race/ethnicity of the residents in the neighborhood surrounding the Project, as indicated in U.S. Census documents, shall be considered those least likely to apply.

2.10.1.6. Use available resources to reach potential clients, including, but not limited to:

2.10.1.6.1. Community organizations;

2.10.1.6.2. Housing counseling agencies;

2.10.1.6.3. Places of worship;

2.10.1.6.4. Social service centers:

2.10.1.6.5. Tucson Pima Coalition to end Homelessness;

2.10.1.6.6. Homeless centers and shelters;

2.10.1.6.7. Employment centers;

2.10.1.6.8. Medical service providers; and

2.10.1.6.9. Fair housing organizations.

2.10.1.7. Maintain files containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letters) and the results of these various marketing efforts. All such documentation shall be available for inspection by County.

2.10.1.8. Maintain a listing of all tenants residing in each HOME-assisted unit at the time of application submittal through the end of the Affordability Period.

2.10.2. County will assess the following activities by Owner:

2.10.2.1. Affirmative marketing efforts; by comparing predetermined occupancy goals (based upon the area from which potential tenants will be drawn) to actual occupancy data that Owner is required to maintain.

2.10.2.2. Outreach efforts; by reviewing marketing efforts.

2.10.2.3. Marketing efforts during the rent-up period and marketing of the HOME-assisted units by use of, at a minimum, an annual compliance certification and/or personal monitoring visit to the Project.

2.10.3. Should Owner fail to follow the affirmative marketing requirements, corrective actions County deems appropriate will be taken including, but is not limited to, requiring more extensive outreach efforts to appropriate contacts to achieve full occupancy.

2.11. Period of Record Retention: All pertinent documents, books, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, income examinations, and other records relating to the Project and Property specified herein shall be retained for five (5) years following expiration of the Affordability Period set forth in this Declaration. Notwithstanding the foregoing, if any litigation, claim, negotiation, audit, or other action has been started before the expiration of the period of affordability specified herein, the records must be retained for five years following completion of the action and resolution of all issues which arise from it, or for five years following the end of the Affordability Period, whichever is later.

2.12. Inspection and Audit of Records: Owner shall make available at all reasonable times, for inspection, transcription, excerpting, examination, copying, and audit by County, the State, the State Auditor General, HUD, the Comptroller General of the United States, or any of their representatives and designees, all pertinent books, documents, papers, accounts, reports, files, tenant lists, applications, leases, waiting lists, income examinations, and other records (hereinafter referred to as "Records") relating to the Project and Property specified herein. Upon request by such inspecting or auditing entity, a legible copy of all such Records shall be produced by the owner at the specified office of Commerce, the County, the State, the State Auditor General, or at any other reasonable location. The original of all such Records shall also be available and produced for inspection, copying, and audit when needed to verify the authenticity of a copy.

2.13. HOME Program Required Reports: Owner shall file an annual report as set forth in the Loan Agreement with County, in a format approved by County, demonstrating compliance with the HOME Program and this Declaration. The annual report shall include the following:

2.13.1. Records demonstrating that each household renting the HOME-assisted units was income eligible at the time of leasing and annually thereafter.

2.13.2. Records demonstrating compliance with the Rent and Income Limitation clause of this Declaration.

2.13.3. Records demonstrating compliance with the Affirmative Marketing clause of this Declaration.

2.13.4. Records documenting the extent to which each racial and ethnic group and single head of households (by gender of household head) have applied for, participated in, or benefited from any part of the Project paid for with HOME Funds.

2.14. Prohibited Occupancy of HOME-assisted units: The employees of Owner are covered persons under 24 CFR § 92.356(f) and, therefore, are prohibited from occupying a HOME-assisted unit in the Project. However, on a case-by-case basis, County could consider granting an exception to the prohibition so long as circumstances warrant and the exception is permitted by the HOME regulations.

2.15. Program Income: Any program income, as defined in the Loan Agreement, must be returned to County as specified therein.

3. Remedies

3.1. Remedies of the County:

3.1.1. If Owner breaches any covenant, condition, or restriction set forth herein, and if such breach remains uncured for a period of sixty (60) days after notice of the breach has been given by County (or for an extended period approved in writing by County), County will be entitled to any or all of the following remedies:

3.1.1.1. Return of all HOME funds provided for the Project, plus interest at the maximum rate permitted by law, and an amount attributable to the increase in equity in the Property attributable to the use of the HOME funds;

3.1.1.2. Resort to any court having jurisdiction of the subject matter for specific performance of this Declaration, for an injunction against any violation of this Declaration, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Declaration, or for initiation of foreclosure proceedings; or

3.1.1.3. Such other relief as may be appropriate, it being acknowledged by Owner that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's breach of this Declaration, because the beneficiaries include the low-income households which were to be benefited by Owner's use of HOME Funds.

3.1.2. County will be entitled to reimbursement of reasonable attorneys' fees and all costs incurred in any judicial action in which the County prevails.

3.1.3. County will require reasonable assurances of security for repayments required pursuant to this section in the form of the Deed of Trust appended to the Loan Agreement, and recorded in the Office of the Pima County Recorder, assigning a

beneficial interest for the Project to County, which Owner must execute as part of this Declaration.

3.2. Remedies are Cumulative: Each right, power and remedy of County provided for in this Declaration, now or hereafter existing at law or in equity or by statute or otherwise, will be cumulative and concurrent and will be in addition to every other right, power or remedy provided for in this Declaration or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by County of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by County of any or all such other rights, powers or remedies.

3.3. Remedies of Other Parties: The occupancy requirements set forth in this Declaration also will inure to the benefit of, and may be judicially enforced against Owner, by affected households who are, or were, eligible for the HOME-assisted units. Any party that prevails in such judicial action against Owner will be entitled to reimbursement of its reasonable attorneys' fees and costs.

4. Representations and Warranties of Owner

4.1. Valid Execution: Owner represents and warrants that Owner has validly executed this Declaration and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity to:

4.1.1. Enter into this Declaration;

4.1.2. Carry out Owner's obligations as described in this Declaration; and

4.1.3. Assume responsibility for compliance with all applicable federal, State and local laws, codes, ordinances, rules and regulations.

4.2. No Conflict or Contractual Violation: To the best of Owner's knowledge, the making of this Declaration and Owner's obligations hereunder:

4.2.1. Will not violate any contractual covenants or restrictions between Owner and any third party or any such covenants or restrictions affecting the Property;

4.2.2. Will not conflict with any of the instruments that create or establish Owner's authority;

4.2.3. Will not conflict with any applicable public or private restrictions;

4.2.4. Do not require any consent or approval of any public or private authority which has not already been obtained; and

4.2.5. Are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against:

4.2.5.1. Owner, without regard to capacity;

4.2.5.2. Any person with whom Owner may be jointly or severally liable; or

4.2.5.3. The Property or any part thereof.

4.3. No Litigation: No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Declaration.

4.4. No Bankruptcy: There is no pending or, to Owner's best knowledge, threatened any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for owner under any federal, state or other statute, law, or regulation relating to bankruptcy, insolvency or relief for debtors.

4.5. No Encumbrances or Attachment: Owner shall not allow the Property to be attached in any manner, including, but not limited to, any liens or other encumbrances or any mortgages or other security interest, except for those liens and encumbrances set forth in Attachment 3 to this Declaration, without the prior written consent of the County.

4.6. Indemnification: Owner will indemnify, defend and hold harmless the County from and against all liabilities, losses, claims, damages, demands, suits, liens, judgments, reasonable attorney's fees, costs and expenses incurred by the County as a result of any material inaccuracy in any of the representations and warranties contained in this Part 4.

5. Miscellaneous

5.1. Binding Effect; Covenants Running With the Land: During the Affordability Period, this Declaration and the covenants, conditions and restrictions contained herein will be deemed to be covenants running with the land for the benefit of Pima County and its successors, and shall pass to and be binding upon current or subsequent Owner's and their heirs, assigns and successors in title to the Property, or if the Property does not include title to land, but includes a leasehold interest in land, this Declaration and the covenants, conditions and restrictions will bind the leasehold interest as well as the Property and will pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Affordability Period and in accordance with the terms hereof said covenants, conditions and restrictions will expire. Each and every agreement, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof will conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions, and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such agreement, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, conditions and restrictions will run to each portion of the Property.

5.2. Recordation: Owner will comply with all statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of County to enforce this Declaration. After execution of this Declaration by Owner, County will record this Declaration in the Office of the Pima County Recorder.

5.3. Amendments: This Declaration may not be amended or modified except by a written instrument signed by each party hereto and recorded or filed as this Declaration was recorded or filed.

5.4. Notices: All notices required or permitted to be given pursuant to this Declaration must be in writing and will be deemed to have been duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

COUNTY:

Margaret Kish, Director
Community Development and
Neighborhood Conservation Department
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

CONTRACTOR:

Don Strauch, Executive Director
TMM Family Services, Inc.
1550 N. Country Club Rd.
Tucson, AZ 85716

With a copy to:

Pima County Housing Center
Betty Villegas, Affordable Housing
Program Manager
801 W. Congress Street
Tucson, AZ 85745

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this section.

5.5. Laws:

5.5.1. Incorporation of Federal Regulations. The provisions contained in Part 92 of title 24 of the Code of Federal Regulations, as amended, are incorporated into this Declaration by this reference as if fully set forth herein.

5.5.2. Compliance with Laws, Permits and Certifications: For the Affordability Period, Owner will comply with all federal, state and local laws, codes, ordinances, rules, and regulations, conditions and assurances and will keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required in regard to the Project.

5.5.3. Governing Law: This Declaration, as it may affect the rights, remedies and obligations of the County, shall be governed by and construed in accordance with federal law. Insofar as federal law does not apply, the provisions of this Declaration will be governed by and construed in accordance with the laws of the State of Arizona.

5.6. Severability: This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances will not be affected thereby, but rather will be enforced to the greatest extent permitted by law.

5.7. Indemnification: Owner will protect, defend, indemnify, and hold harmless County from and against any and all liabilities, damages, demands, claims, suits, liens, and judgments of

whatever nature including but not limited to claims for contribution or indemnification for injuries to or death of any person or persons caused by, in connection with, or arising out of any activities undertaken by Owner pursuant to this Declaration or any negligence of Owner relating to the Project or the Property. Owner's obligation to protect, defend, indemnify, and hold harmless includes any and all attorneys' fees incurred by County in the defense or handling of said suits, demands, judgments, liens and claims and all attorneys' fees and investigation expenses incurred by County in enforcing or obtaining compliance with the provisions of this Declaration.

5.8. Section Titles: Section titles are for descriptive purposes only and will not control or limit the meaning of the text of this Declaration.

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6. Entire Agreement: This Declaration and the Loan Agreement contain the entire understanding between the parties hereto with respect to the restrictions on the Property and Project. The Owner has executed a Real Estate Non-Recourse ("Note") secured by a Deed of Trust Assignment of Rents and Security Agreement ("Deed of Trust"), which Deed of Trust secures the obligations of this Declaration, the Loan Agreement, and the Note.

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

Pima County

_____

Chair, Board of Supervisors Date

ATTEST:

_____

Clerk of the Board Date

APPROVED AS TO CONTENT:

_____

Director, Community Development Date
and Neighborhood Conservation Department

APPROVED AS TO FORM:

_____

Karen S. Friar, Deputy County Attorney

TMM Family Services, Inc.

_____

Executive Director Date

_____

Printed Name

State of Arizona)
) ss
County of Pima)

Acknowledged before me on _____, 2016, by _____
_____, as Executive Director of TMM Family Services, Inc., an Arizona non-profit corporation.

_____ My commission expires: _____

Notary Public

EXHIBIT E - ATTACHMENT 1

Parcel Descriptions:

Fairmont Street Site: Pima County Tax Parcel No.'s: 122-14-0130 and 122-14-0120

Lee Street Site: 122-17-3850, 122-17-384A and 122-17-384B

Physical Addresses:

Fairmont Street Site: 3102 and 3108 E. Fairmount Street, Tucson, AZ 85716

Lee Street Site: 3131, 3135, 3137, 3145, 3147 and 3149 E. Lee St, Tucson, AZ 85716

Legal Descriptions (respectively listed in same order as above):

Fairmont Street Site:

3102 E. Fairmont Street (Tax Parcel No. 122-14-0130):

W210' N135' S1290' SW4 SW4 EXC W41'
.52 AC SEC 4-14-14

3108 E. Fairmont Street (Tax Parcel No. 122-14-0120):

E54' W264' N135' S1290' SW4
.20 AC SEC 4-14-14

Lee Street Site:

3131 E. Lee Street (Tax Parcel No. 122-17-3850):

JONES E2 LOT 3 BLK 13

3135 and 3137 E. Lee Street (Tax Parcel No. 122-17-384B):

JONES PTN W60' S200' LOT 2 BLK 13

3145, 3147 and 3149 E. Lee Street (Tax Parcel No. 122-17-384A):

JONES PTN S200' EXC W60' LOT 2 BLK 13

EXHIBIT E - ATTACHMENT 2

Permitted Encumbrances

The following two (2) encumbrances against the property are permitted for the Project:

1. Wells Fargo Bank Mortgage $1,250,000 (25-year lien with balloon payment at 15 years)

2. Pima County G.O. Bond Program $545,000 Lien (30-year Affordability Restriction)

EXHIBIT E - ATTACHMENT 3

HOME PROGRAM RENT LIMITS AND UTILITY ALLOWANCE

HOME PROGRAM RENT LIMITS

2016 RENT LIMITS
City of Tucson / Pima County
Effective 06/06/2016

Table 1

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
LOW Home	$528	$566	$680	$785	$876	$966	$1057
HIGH Home	$532	$644	$862	$987	$1081	$1175	$1268

All rents must be adjusted for utility allowances established locally (see Table 2). The allowable rent is the applicable high or low rent less the utility allowance for those utilities paid by the tenant.

UTILITY ALLOWANCES
City of Tucson / Pima County
Effective 01/01/16

Table 2

SINGLE FAMILY/PATIO/MANUFACTURED HOMES

TYPE OF UTILITIES	DOLLARS PER MONTH					
BEDROOM SIZE	0	1	2	3	4	5
ELECTRICITY	$15	21	27	33	41	47
ELECTRIC HEAT	27	38	49	60	76	87
ELECTRIC HOT WATER	13	18	23	29	36	42
ELECTRIC COOKING	4	6	7	9	12	13
EVAPORATIVE COOLING	8	11	14	17	21	24
AIR CONDITIONING	18	25	32	39	49	56
GAS HEAT	12	15	18	21	26	29
GAS HOT WATER	5	6	8	9	11	12
GAS COOKING	2	2	3	3	4	5
WATER/SEWER (City)	50	60	71	83	111	129
TRASH (CITY ONLY)	5	5	5	5	5	5
TRASH (COUNTY ONLY)	26	26	26	26	26	26
REFRIGERATOR	5	5	5	5	5	5
RANGE	3	3	3	3	3	3
PROPANE HEAT	20	28	36	44	56	64
PROPANE HOT WATER	9	12	15	19	24	27
PROPANE COOKING	3	4	6	7	9	10

APARTMENT/CONDO/TOWNHOUSE/DUPLEX/TRIPLEX

TYPE OF UTILITIES	DOLLARS PER MONTH					
BEDROOM SIZE	0	1	2	3	4	5
ELECTRICITY	$13	18	23	28	35	41
ELECTRIC HEAT	23	33	42	51	65	75
ELECTRIC HOT WATER	11	16	20	25	31	36
ELECTRIC COOKING	4	5	6	8	10	11
EVAPORATIVE COOLING	6	9	11	14	18	20
AIR CONDITIONING	15	21	27	33	42	48
GAS HEAT	12	15	18	21	26	29
GAS HOT WATER	5	6	8	9	11	12
GAS COOKING	2	2	3	3	4	5
WATER/SEWER	47	56	66	77	98	114
TRASH (CITY ONLY)	5	5	5	5	5	5
TRASH (COUNTY ONLY)	26	26	26	26	26	26
REFRIGERATOR	5	5	5	5	5	5
RANGE	3	3	3	3	3	3
Propane Heat	20	28	36	44	56	64
Propane Hot Water	9	12	15	19	24	27
Propane Cooking	3	4	6	7	9	10

APPLYING RENT AND INCOME LIMITS TO YOUR PROJECT

Annually, HUD publishes Fair Market Rents and calculations of rents affordable to families earning 65 percent and 50 percent of median income (see Table 1). Low and High HOME rents are determined based on these figures. (See the HOME regulations for a detailed explanation of how these are determined.) Following is a step-by-step guide to applying the High and Low HOME rent limits to your project. Note that the requirements vary depending on the number of HOME-assisted units.

1 TO 4 HOME-ASSISTED UNITS:

For projects with 1 to 4 HOME-assisted rental units, the following requirements apply:

Rent Limits:

- All HOME-assisted units must have rents at or less than the High HOME Rent (see Table 3), adjusted for utility allowances.

Table 3

HIGH HOME	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
RENT	$532	$644	$862	$987	$1081	$1175	$1268

Income Limits:

- All HOME-assisted units must be rented to families at or less than 80% of median income.

1 Person family $31,750 4 Person family $45,350 7 Person family $56,250
2 Person family $36,300 5 Person family $49,000 8 Person family $59,900
3 Person family $40,850 6 Person family $52,650

5 OR MORE HOME-ASSISTED UNITS:

For projects with 5 or more HOME-assisted rental units, the following requirements apply:

Rent Limits:

- 20% of the HOME-assisted units must have rents at or less than the Low HOME Rent (see Table 4), adjusted for utility allowances.

Table 4

LOW HOME	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
RENT	$528	$566	$680	$785	$876	$966	$1057

- The remaining 80% of HOME-assisted units must have rents at or less than the High HOME Rent (see Table 5), adjusted for utility allowances.

Table 5

HIGH HOME	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
RENT	$532	$644	$862	$987	$1081	$1175	$1266

Income Limits:

- All HOME-assisted units must be rented to families at or below 80% of median income:

1 Person family $31,750 4 Person family $45,350 7 Person family $56,250
2 Person family $36,300 5 Person family $49,000 8 Person family $59,900
3 Person family $40,850 6 Person family $52,650

- 90% of the total number of HOME-assisted units must be rented to families at or below 60% of median income:

1 Person family $23,820 4 Person family $34,020 7 Person family $42,240
2 Person family $27,240 5 Person family $36,780 8 Person family $44,940
3 Person family $30,660 6 Person family $39,480

- 20% of the total number of HOME-assisted units must be rented to families at or below 50% of median income. These same units must have rents at or less than the Low HOME Rent (see table 4), adjusted for utility allowances. These units can be the same units that count toward the 90% requirement above.

1 Person family $19,850 4 Person family $28,350 7 Person family $35,200
2 Person family $22,700 5 Person family $30,650 8 Person family $37,450
3 Person family $25,550 6 Person family $32,900

END OF EXHIBIT E

EXHIBIT F

When recorded, return to:

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

DEED OF TRUST AND ASSIGNMENT OF RENTS

TMM Family Services Senior &Veteran Housing Project

DATE:

TRUSTOR: TMM Family Services Inc., an Arizona non-profit corporation, with a local Arizona mailing address of:

1550 North Country Club Rd., Tucson, Arizona 85716

TRUSTEE: _____whose mailing address is:

_____, Tucson, AZ 857__

BENEFICIARY: Pima County, a political subdivision of the State of Arizona, whose mailing address is:

Pima County Community Development & Neighborhood Conservation
Attention: Pima County HOME Program
801 West Congress Street
Tucson, Arizona 85745

THE PROPERTY: Property situated in Pima County, Arizona, described as follows:

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

Street address and identifiable location of this property:

3102 and 3108 E. Fairmont Street, Tucson, AZ 85716 (the **Fairmont St. site**) and;

3131, 3135, 3137, 3145 and 3149 E. Lee Street, Tucson, AZ 85716 (the **Lee St. site**)

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

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

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

FOR THE PURPOSE OF SECURING:

A. Payment of the HUD HOME Program indebtedness in the principal sum of **SEVEN HUNDRED EIGHT THOUSAND DOLLARS ($708,000.00)**, evidenced by a Promissory Note in favor of Beneficiary of even date herewith (See **Attachment 2** hereto), and any extension or renewal thereof, executed by Trustor.

B. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a Promissory Note or Notes reciting that they are secured by this Deed of Trust.

C. Performance of each agreement of Trustor contained in this Deed of Trust.

D. Performance of Trustor of each agreement and covenant contained in the Declaration of Covenants, Conditions, and Restrictions (the "CC&Rs") made by Trustor and recorded in Sequence _____, Office of the Pima County Recorder.

E. Performance of the terms of the Pima County HOME Program funding contract, Pima County Contract No. CT-CD-__*____, between Beneficiary and Trustor (the "***HOME Funding Agreement***").

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

1. To keep the Property in good condition and repair, not to remove or demolish any building, thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any action upon the Property in violation of law; and to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

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

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorney's fees and costs in a reasonable sum, in any such action or proceeding in

which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.

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

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

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

6. That any award of damages in connection with any direct or indirect exercise of governmental police power or eminent domain, or for injury to the Property by reason of public use, or for damages for private trespass or injury thereto, is assigned and will be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and the ownership thereof subject to this Deed of Trust). Upon receipt of such monies Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

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

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

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

truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

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

11. That upon default by Trustor in (a) the payment of any indebtedness secured hereby, (b) the performance of any obligation in the ***HOME Funding Agreement***, (c) the performance of any obligation in the **CC&Rs**, or (d) in performance of any agreement hereunder, Beneficiary may, after giving written notice of default to Trustor and upon Trustor's failure to cure such default within ten (10) days of such notice for nonpayment of any amount due or within sixty (60) days of such notice for any other default, declare all sums secured hereunder immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature of the default, and of election to cause the Property to be sold under this Deed of Trust.

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

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

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

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

14. That, upon execution, this Deed of Trust shall be recorded in the Office of the Pima County Recorder in Pima County, Arizona. That Trustee accepts this Trust upon execution and recordation. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee is a party unless brought by Trustee.

15. Binding Agreement: This Deed of Trust runs with the land and is binding on all future owners of all or any part of the Property.

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

TRUSTOR: **TMM Family Services, Inc.**

By:_____

Title: _____

ACKNOWLEDGEMENT:

State of Arizona)
) ss.
County of Pima)

This instrument was acknowledged before me this _____ day of _____, 2016, by _____ _____, as _____ of Compass Affordable Housing, Inc., an Arizona non-profit corporation operating in Pima County, Arizona.

_____Notary Public

My commission will expire: _____

Accepted and Approved by:

_____
Director, Pima County Community Development and Neighborhood Conservation Department

Exhibit F, Attachment 1

Parcel Descriptions:

Fairmont Street Site: Pima County Tax Parcel No.'s: 122-14-0130 and 122-14-0120

Lee Street Site: 122-17-3850, 122-17-384A and 122-17-384B

Physical Addresses:

Fairmont Street Site: 3102 and 3108 E. Fairmount Street, Tucson, AZ 85716

Lee Street Site: 3131, 3135, 3137, 3145, 3147 and 3149 E. Lee St, Tucson, AZ 85716

Legal Descriptions (respectively listed in same order as above):

Fairmont Street Site:

3102 E. Fairmont Street (Tax Parcel No. 122-14-0130):

W210' N135' S1290' SW4 SW4 EXC W41'
.52 AC SEC 4-14-14

3108 E. Fairmont Street (Tax Parcel No. 122-14-0120):

E54' W264' N135' S1290' SW4
.20 AC SEC 4-14-14

Lee Street Site:

3131 E. Lee Street (Tax Parcel No. 122-17-3850):

JONES E2 LOT 3 BLK 13

3135 and 3137 E. Lee Street (Tax Parcel No. 122-17-384B):

JONES PTN W60' S200' LOT 2 BLK 13

3145, 3147 and 3149 E. Lee Street (Tax Parcel No. 122-17-384A):

JONES PTN S200' EXC W60' LOT 2 BLK 13

Exhibit F, Attachment 2

PIMA COUNTY HOME PROGRAM

REAL ESTATE NON-RECOURSE PROMISSORY NOTE
(With Balloon Payment)

Date: July___, **2016**

Trust Property:

Fairmont Street Site: Pima County Tax Parcel No.'s 122-14-0130, 122-14-0120
Situs addresses:
3102 and 3108 E. Fairmont Street, Tucson, AZ 85716

Lee Street Site: Pima County Tax Parcel No.'s 122-17-3850, 122-17-384A and 122-17-384B
Situs addresses:
3131, 3135, 3137, 3145 and 3149 E. Lee Street, Tucson, AZ 85716

Amount: **SEVEN HUNDRED EIGHT THOUSAND DOLLARS ($708,000.00)**

Definitions: The following terms shall have the same meaning throughout this document:

Affordability Period 20 years from the date of first occupancy of the last HOME-Assisted unit, defined in the Contract, to be occupied

CC&Rs Declaration of Covenants, Conditions, and Restrictions for TMM Family Services Senior and Veterans Housing Project setting forth the obligations of the TMM Family Services. Inc.,, Inc. for the utilization of federal HOME funds

Contract Contract between TMM Family Services, Inc. and Pima County setting forth the terms and conditions by which TMM Family Services, Inc. is provided with federal HOME funds for the construction of a twenty (20) unit rental housing project to be called "TMM Family Services Senior and Veterans Housing Project"; Pima County Contract No. _____.

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

Deed of Trust The Deed of Trust and Assignment of Rents naming TMM Family Services, Inc. as Trustor and Pima County as Trustee to secure performance for the HOME funds contributed for the construction of TMM Family Services Senior and Veterans Housing Project

TMM Family Services Senior and Veterans Housing Project *See* Project

Note This Real Estate Non-Recourse Promissory Note

Maker TMM Family Services. Inc., an Arizona non-profit corporation operating in Pima County, Arizona

Project TMM Family Services Senior and Veterans Housing Project; a twenty (20) unit rental housing project for very low- and low-income Senior and Veteran households to be constructed on the Trust Property owned by Maker.

Promise to Pay: For value received, the undersigned Maker promises to pay County pursuant to the terms of this Note the principal sum of SEVEN HUNDRED EIGHT THOUSAND DOLLARS ($708,000.00) with interest at 0% per annum.

Payments: Maker will make one balloon payment at the end of the Affordability Period as defined in the Contract and more particularly described below in Pima County, Arizona. All amounts of principal and interest, if any, remaining unpaid under this note at the end of the 20 year Affordability Period will be repaid. The balloon payment will be SEVEN HUNDRED EIGHT THOUSAND DOLLARS ($708,000.00) with interest at 0% per annum, unless deferred as provided below. All amounts payable hereunder are payable in legal tender of the United States of America. Acceptance by County of any payment in an amount less than the amount then due hereunder is an acceptance on account only and not an accord and satisfaction.

Security: This Note is secured by an Assignment of Beneficial Interest under that certain Deed of Trust dated the same date as this Note, executed by Maker, assigning all of Maker's interest under that Deed of Trust to County. . The Deed of Trust encumbers the Trust Property A portion of the construction and/or development costs to build the Project on the Trust Property will be derived from the proceeds of this Note. The Deed of Trust also secures the performance of the Contract between Maker and County which is funded by the U.S. Department of Housing and Urban Development HOME Program administered by County.

Deferral of Payments: Principal and interest will be paid no later than twenty (20) years from the date of first occupancy of the last HOME-Assisted unit to be occupied, as evidenced by the date upon which County approves the HOME Completion Report (HUD Form 40087) for the Project. As a special consideration, provided that Maker has not defaulted on either the Deed of Trust or the Contract, County, in its sole discretion and with written approval of the Pima County Board of Supervisors, may waive or forgive all or any portion of the loan amount in consideration for an extension of the Affordability Period for a minimum of an additional ten (10) years. The intent of this provision is to provide Maker with the ability to earn a reasonable annual return on its investment in the Property. This provision does not, without further action of the County as set forth above, forgive any portion of the principal or interest due County hereunder.

Optional Prepayments: Maker may prepay all or any portion of this Note. Prepayment of this Note does not release Maker of any obligation specified in the CC&Rs for the Project recorded in favor of County.

Collection Procedures, Waiver of Notice: Time is of essence of this Note and each provision hereof. Maker waives grace, notice, notice of default, notice of intent to accelerate, notice of acceleration, protest, demand, presentment for payment and diligence in the collection of this Note, and in the filing of suit hereon, and agrees that its liability and the liability of its heirs, personal representatives, executors, administrators, trustees, beneficiaries, successors and assigns for the payment hereof shall not be affected or impaired by the release or change in the security or by any increase, decrease, change, modification, renewal or extension of the indebtedness or its determination, mode and time of payment. County has the right at all times to decline to make any such release or change in any security given to secure the payment of this Note and to decline to make any such increase, decrease, change, modification, renewal or extension of the indebtedness or its determination, mode or time of payment. This Note is a joint and several obligations when signed by more than one party.

Non-Recourse Note: The obligations described in this Note are secured by the Assignment of Beneficial Interest under the Deed of Trust. Maker's liability under this Note extends only to the Trust Property and the improvements thereon. County shall not (i) seek nor obtain judgment against Maker, or any general partner or limited partner of Maker or its successors or assigns, or (ii) enforce such liability against any other asset, property or funds of Maker for payment of principal or interest under this Note following a trustee's sale or judicial foreclosure of the Deed of Trust. County acknowledges that its sole recourse against Maker or any general partner or limited partner of Maker or its successors and assigns, for any default in obligations hereunder is limited to Maker's, any general partner's or limited partner's interest (if any) in the Trust Property.

Default: In the event of any default in the payment of this Note or breach of any terms of the CC&Rs or of the Contract, County may, after the giving of written notice in the manner provided in the Deed of Trust and the expiration of any cure period therein provided, if the default is not then cured, accelerate and declare the unpaid principal of this Note, together with twelve percent (12%) interest on all unpaid balances hereunder, immediately due and payable without notice, and to foreclose the Deed of Trust by judicial or non-judicial foreclosure.

Delay in Exercising Rights: No delay or omission on the part of County in exercising any right under this Note, the Deed of Trust, the CC&Rs, or the Contract operates as a waiver of such right or any other right under this Note, the Deed of Trust, the CC&Rs, or the Contract. To the extent permitted by law, Maker waives the right in any action on this Note to assert that such action was not commenced within the time required by law for such commencement.

Any failure by County to insist upon, or any election by County not to insist upon strict performance by Maker of any covenant, agreement, term, provision, condition or obligation hereof does not create an estoppel as to County's future right to insist upon strict performance, and is not a waiver of same or of any other covenant, agreement term, provision, condition or obligation hereof. County has the right at any time or times thereafter to insist upon strict performance by Maker of any and all such covenants, agreements, terms, provisions, conditions and obligations.

Costs and Attorney's Fees: Upon this Note becoming due or being declared due and upon the same being placed in the hands of attorneys for collection, Maker will pay a reasonable amount as attorney's fees and costs.

Notices: All notices required or permitted to be given under this Note must be in writing and will be considered duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

COUNTY:

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

With a copy to:

Director, Pima County Housing Center
Pima County Community Development
and Neighborhood Conservation Department
801 W. Congress Street
Tucson, AZ 85745

COUNTY:

TMM Family Services
Don Strauch, Executive Director
3044 N Alvernon Way
Tucson, AZ 85712
(520) 352-2626

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this section.

Insurance: Maker will insure the Trust Property and the Project with an insurer acceptable to County. The insurance must be maintained until all of the secured obligations under this Note are paid in full. Maker will cause County to be named as loss payee or mortgagee so that any benefits arising from the insured risks will be paid to County and applied to the secured obligations evidenced by the Note. In the event of loss or damage to the Trust Property, County may require additional security or assurance of payment before allowing any insurance benefits to be used to repair or replace the Project improvements on the Trust Property.

Binding on Successors and Assigns: The covenants, agreements, terms, provisions, conditions and obligations contained in this Note bind the successors and assigns of Maker and inure to the benefit of County. To the extent permitted by law, Maker waives diligence, demand, notice, presentment, notice of dishonor, notice of non-payment,

grace, notice of protest and notice of intent to accelerate the maturity of this Note and the defense of any statute of limitations, and any other exemptions involving laws. This waiver is binding upon Maker and upon Maker's heirs, successors and assigns.

Severability: If any provision of this Note is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, this Note will be construed not to contain that provision or provisions and all other provisions of this Note will remain in full force and effect. To this end, the provisions of this Note are severable.

IN WITNESS WHEREOF, Maker has executed this Note s of the first date written below:

Signed this _____ day of August, 2015.

Maker: TMM Family Services. Inc.,, an Arizona non-profit corporation operating in Pima County, Arizona.

By:_____

Its _____

ACKNOWLEDGEMENT:

State of Arizona)
) ss.
County of Pima)

This instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____ of TMM Family Services. Inc.,, an Arizona non-profit corporation operating in Pima County, Arizona.

_____Notary Public

My commission will expire: _____

Accepted and Approved by:

_____
Director, Pima County Community Development and Neighborhood Conservation Department

END OF EXHIBIT F

EXHIBIT G

Annual Rent and Occupancy Report

HOME RENT AND OCCUPANCY COMPLIANCE REPORT

(To be completed by project owner/manager)

Owner :_____
Project Name:_____
Building Address:_____

Project Manager Name: _____
Project Manager Address: _____
Project Manager Phone: _____

Date of Report: _____

Report Prepared By: _____

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Unit No.	Bedroom Size	Is Unit Occupied?	Resident Name (Last, First)	Size of Household	Race/Ethnicity of Head of Household	Move In Date	Cert Date	Annual Gross Income/Assets	% of Area Median Income	Low or High HOME Rent (Enter 'L' or 'H')	Low or High HOME Rent Amt	Utility Allowance	Maximum Allowable Rent (L-M)	Actual Tenant Rent	Section 8 Assistance? Yes/No

Certification: I certify that the information included in this report represents a true and complete statement of the facts.

Signature: _____ Date: _____ Title: _____

HOME RENT AND OCCUPANCY COMPLIANCE REPORT
INSTRUCTIONS

Complete the attached form for each unit assisted with HOME funds. This form is to be submitted on an annual basis. Enter each unit on a separate line. For projects which include multiple addresses, complete a separate form for each address. Enter one code only in each block.

A) **Unit Number.** Enter the unit number of each unit assisted with HOME funds.

B) **Bedroom Size.** Enter "0" for an efficiency unit, 1 for 1 bedroom, 2 for 2 bedrooms, 3 for 3 bedrooms, 4 for 4 bedrooms, and 5 for 5 or more bedrooms.

C) **Is Unit Occupied.** Enter Yes if the unit is occupied by a tenant or No if it is vacant.

D) **Resident Name.** Enter the Last, First name of head of household.

E) **Size of Household.** Enter the total number of persons living in the unit.

F) **Race/Ethnicity-Head of Household:** For each occupied residential unit, enter one code only based on the following definitions:

1. **White, Not Hispanic Origin.** A person having origins in any of the original peoples of Europe, North Africa or the Middle East, but not of Hispanic origin.
2. **Black, Not Hispanic Origin.** A person having origins in any of the black racial groups of Africa, but not of Hispanic origin.
3. **Native American.** A person having origins in any of the original peoples of the North American Continent and who maintains cultural identification through tribal affiliations or community recognition.
4. **Asian or Pacific Islander.** A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. For example: China, India, Japan, Korea, the Philippine Islands and Samoa.
5. **Hispanic.** A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

G) **Move In Date.** Enter the date the tenant moved into the unit.

H) **Recertification Date.** Enter the annual eligibility recertification date of the tenant's income and assets.

I) **Annual Gross Income/Assets:** Enter the annual gross income plus asset income from "Resident Certification" form.

J) **Percent of Area Median Income.** For each occupied residential unit, enter one of the following based on the annual income limits established by HUD:

- **0-30 Percent of Area Median** means a household whose adjusted income is at or below 30 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families.
- **30-50 Percent of Area Median** means a household whose adjusted income exceeds 30 percent and does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families.
- **50-60 Percent of Area Median** means a household whose adjusted income exceeds 50 percent and does not exceed 60 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families.
- **60-80 Percent of Area Median** means a household whose adjusted income exceeds 60 percent and does not exceed 80 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families.

K) **Low or High HOME Rent Mark "L" or "H".** Indicate if this unit is designated as a Low or High Home Rent unit.

L) **Low or High Home Rent:** Enter the Low or High Home rent amount by using the HOME Rent Limits Schedule provided by Community Services Department.

M) **Utility Allowance.** Enter the utility allowance (for utilities paid by the tenant) for the appropriate bedroom size. Compute utility costs for the area (and in the case or partial utilities, compute costs for utilities excluded from the rent), by using the utility allowance schedule provided by Community Services Department.

N) **Maximum Allowable Rent.** Enter the difference between the Low or High Home Rent and the Utility Allowance

O) **Actual Tenant Rent.** Enter the actual rent to the nearest dollar paid by the tenant.

END OF EXHIBIT G

EXHIBIT H – 1

PIMA COUNTY

HOME INVESTMENT PARTNERSHIPS P ROGRAM
AFFIRMATIVE MARKETING REPORT

For the period beginning January 1, _____ and ending December 31, _____

Project Name: _____

Project Address: _____

City/State/Zip Code:_____ Owner's Phone:_____

Property Manager: _____ Manager's Phone #: _____

1. Check (✓) all that apply:

☐ Advertisements included the equal housing opportunity logo or statement

☐ Advertisements in minority-owned newspapers or on minority radio and/or television

☐ Advertisements in general audience newspapers, radio, and/or television

☐ Distributed brochures and/or leaflets

☐ Placed ad in rental office window

Utilized the following resources for outreach to those least likely to apply to live in the unit(s):

☐ Community organizations
☐ Places of worship
☐ Employment centers
☐ Fair housing groups
☐ Housing counseling agencies
☐ Social service centers
☐ Medical service centers
☐ Other (please specify):_____

2. A completed "HOME Rent and Occupancy Compliance Report" is attached with this certification.

CERTIFICATION (to be signed by property owner or designee)

I hereby certify that the above actions have been taken to provide information and otherwise attract eligible person from all racial, ethnic, and gender groups, regardless of disability and/or familial status, in the housing market area of this project as per the Fair Housing Act of 1968 and the Fair Housing Amendments Act of 1988. I understand that if these actions are determined unacceptable or otherwise unsuccessful, Pima County may take corrective actions.

Prepared by: _____ Date: _____

Printed Name: _____ Title: _____

EXHIBIT H – 2

PIMA COUNTY

COMMUNITY DEVELOPMENT

HOME PROGRAM

AFFORDABILITY CERTIFICATION

For the period beginning January 1, ____ and ending December 31, _____

Project Name: _____

Project Address: _____

City/State/Zip Code: _____

Owner's Name: _____ Phone #: _____

Property Manager: _____ Manager's Phone #: _____

The undersigned, acting as the ☐ Owner or ☐ Manager for the above-referenced HOME-assisted project, hereby certifies that:

1. Current HOME program income limits are properly applied and utilized.
2. Current HOME program rent limits are properly applied and utilized.
3. Current utility allowances are properly applied and utilized.
4. Records for each HOME-assisted unit are retained in accordance with HOME program requirements.
5. Records for each tenant occupant are retained in accordance with HOME program requirements.
6. Tenants are selected in accordance with written tenant selection procedures.
7. The City of Tucson/Pima County Community Services Department has been notified of any change in the management agent.
8. The City of Tucson/Pima County Community Services Department has been notified of any pending change in ownership.
9. The City of Tucson/Pima County Community Services Department has been notified of any noncompliance with HOME program requirements.

Owner/Project Manager Signature: _____ Date: _____

Typed Name: _____ and Title: _____