

3.3. **Former Paragraph 7.5 – Suspension** is deleted in its entirety.

4. **SECTION 14.0 – NOTICE** is amended to require notice also be provided to:

Wells Fargo Affordable Housing Community Development Corporation
301 South College Street, MAC D1053-170
Charlotte, NC 28288
Attn: Director of Tax Credit Asset Management

5. **SECTION 23.0 – NO THIRD PARTY BENEFICIARIES** the text is deleted in its entirety and replaced with the following:

Except as set forth specifically herein, nothing in the provisions of this Contract is intended to create duties or obligations to or rights in third parties not parties to this Contract or effect the legal liability of either party to the Contract by imposing any standard of care different from the standard of care imposed by law. The following entity will be considered a third party beneficiary for the purpose of enforcing Partnership's performance under this Contract:

Wells Fargo Affordable Housing Community Development Corporation
Wells Fargo Bank, National Association

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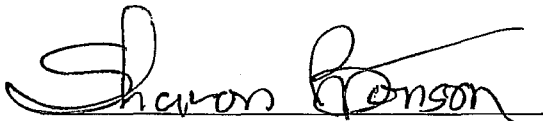
6. **EXHIBIT C – PERFORMANCE DEED OF TRUST** is deleted in its entirety and replaced with the Exhibit C – PERFORMANCE DEED OF TRUST attached to this Amendment.

All other provisions of the Agreement, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties. As of the date this amendment is executed by Pima County, Partnership is not in default of any provision of the Agreement.

THIS AMENDMENT NO. 1 MAY BE SIGNED IN COUNTERPARTS.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers.

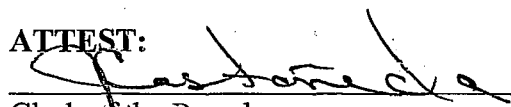
PIMA COUNTY:


Chair, Board of Supervisors

MAR 21 2017

Date

ATTEST:


Clerk of the Board

MAR 21 2017

Date

PARTNERSHIP:

FSL Padre Kino Village, LP, an Arizona
limited partnership

By: FSL Padre Kino, LLC, an Arizona limited
liability company

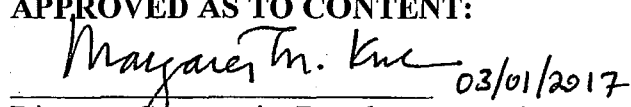
Its: Sole Member

By: FSL Real Estate Services, an Arizona
nonprofit corporation

Its: Sole Member

By: _____
Tom Egan, President

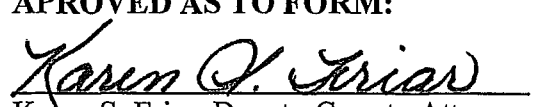
APPROVED AS TO CONTENT:


Director, Community Development and
Neighborhood Conservation Department

Date

Date

APPROVED AS TO FORM:


Karen S. Friar, Deputy County Attorney

6. **EXHIBIT C – PERFORMANCE DEED OF TRUST** is deleted in its entirety and replaced with the Exhibit C – PERFORMANCE DEED OF TRUST attached to this Amendment.

All other provisions of the Agreement, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties. As of the date this amendment is executed by Pima County, Partnership is not in default of any provision of the Agreement.

THIS AMENDMENT NO. 1 MAY BE SIGNED IN COUNTERPARTS.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers.

PIMA COUNTY:

Chair, Board of Supervisors

Date

ATTEST:

Clerk of the Board

Date

APPROVED AS TO CONTENT:

Director, Community Development and
Neighborhood Conservation Department

Date

APPROVED AS TO FORM:

Karen S. Friar, Deputy County Attorney

PARTNERSHIP:

FSL Padre Kino Village, LP, an Arizona
limited partnership

By: FSL Padre Kino, LLC, an Arizona limited
liability company

Its: Sole Member

By: FSL Real Estate Services, an Arizona
nonprofit corporation

Its: Sole Member

By: Tom Egan
Tom Egan, President

3/2/17
Date

END OF EXHIBIT B

PERFORMANCE DEED OF TRUST

When Recorded, Please Return To:

Affordable Housing Program
Community Development and Neighborhood Conservation Department
Pima County
2797 East Ajo Way
Tucson, AZ 85713-6223

**PERFORMANCE DEED OF TRUST
AFFORDABLE HOUSING BOND PROGRAM**

Date: _____

1. Definitions

- 1.1. Trustor. FSL Padre Kino Village, LP, an Arizona limited partnership, whose mailing address is 1201 East Thomas Road, Phoenix, Arizona 85014.
- 1.2. Trustee. Chicago Title Insurance Company, whose mailing address is: 14200 N. Northsight Blvd., Suite 100, Scottsdale, AZ 85260.
- 1.3. Beneficiary or County. Pima County, a body politic and corporate of the State of Arizona, whose mailing address is: Pima County Community Development and Neighborhood Conservation Department, 2797 East Ajo Way, Tucson, AZ 85713-6223.
- 1.4. Parties. Trustor, Trustee and Beneficiary are collectively the Parties, and individually a Party.
- 1.5. Property. The real property situated in the County of Pima, State of Arizona, as described in **Exhibit A** attached hereto and made a part hereof, together with all buildings, improvements and fixtures thereon or hereinafter erected thereon. Street address of the Property:

111 S. Church Avenue, Tucson, AZ 85701

- 1.6. Project. A total of eighty-three (83) affordable rental housing units for seniors (age 62 and older) called "The Marist on Cathedral Square", developed as follows:
 - 1.6.1. **Site I**: The Tucson Catholic Diocese office building located at 111 S. Church Avenue will be demolished and replaced by a new, seven-story building with sixty-five (65) one-bedroom apartments, ten (10) two-bedroom apartments and other community amenities; and

- 1.6.2. **Site II.** The historic Marist College, built in 1915, located on the corner of Ochoa Street and Church Avenue will be restored, stabilized and renovated with eight (8) one-bedroom apartments and other community amenities.
- 1.7. **Bond Fund Contract.** The Affordable Housing Bond Fund Contract, Pima County Contract No. CT-CD-17*190, between Trustor and Beneficiary for the construction of the Project, as described in **Exhibit B** attached hereto (without Exhibits) and made a part hereof.
- 1.8. **Bond Covenants.** The following are Bond Covenants for purposes of this Performance Deed of Trust:
- 1.8.1. Performance pursuant to the terms and conditions of the Bond Fund Contract.
- 1.8.2. **Affordability Period.** Thirty-eight (38) of the apartments at *Site I* and five (5) of the apartments at *Site II* will maintained and rented to qualified households for a **minimum of thirty (30) years** from the date all of the following have occurred:
- 1.8.2.1. The Project is completed;
- 1.8.2.2. All 83 apartment units have received the final certificate of occupancy from the City of Tucson; and
- 1.8.2.3. At least thirty-eight (38) of the 75 apartment units at *Site I* and five (5) of the apartment units at *Site II* have been leased to qualified households.
- 1.8.3. **Qualified Household.** A “qualified household” is a household with:
- 1.8.3.1. A household income at or below 80% Area Median Income (“AMI”) as defined by the U.S. Department of Housing and Urban Development at initial occupancy; and
- 1.8.3.2. At least one member of the household is age 62 or older.
- 1.8.4. The Affordability Period will remain in full force and effect regardless of any changes in ownership of the Property.
- 1.8.5. Trustor will provide County with written notice and proof of the commencement date of the Affordability Period.
- 1.9. **County Contribution.** The sum of Six Hundred Four Thousand Nine Hundred Eighty-nine Dollars (**\$604,989.00**) (“the County Contribution”), which is the amount contributed by Beneficiary towards the Project.

2. **Grant of Property.** Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee in Trust, with power of sale, the Property, together with leases, rents, issues, profits, or income therefrom (all of which are "*Property Income*"), subject to:
 - 2.1. the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and
 - 2.2. 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.
3. **Security.** The grant pursuant to Paragraph 2 above is for the purpose of securing:
 - 3.1. performance of the Bond Covenants;
 - 3.2. the County Contribution, provided that the Parties hereto acknowledge and agree Trustor has no obligation to repay the County Contribution to Beneficiary except as provided in the Bond Fund Contract and this Performance Deed of Trust; and
 - 3.3. performance of each agreement of Trustor herein contained.
4. **Termination of Deed of Trust.** Notwithstanding any other provision of this Performance Deed of Trust, this Performance Deed of Trust will terminate at the end of the Affordability Period. After the expiration of the Affordability Period, Beneficiary will execute a release of this Performance Deed of Trust within thirty (30) days after receiving a written request from Trustor.
5. **Obligations of Trustor to Protect Security.** To protect the security of this Performance Deed of Trust, Trustor agrees:
 - 5.1. to keep the Property and the Project (both *Site I* and *Site II*) 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 and the Project or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon the Property or the Project in violations of law; and do all other acts which from the character or use of the Property and the Project may be reasonably necessary, the specific enumerations herein not excluding the general;
 - 5.2. to provide, maintain, and deliver to Beneficiary, fire insurance for the Project (both *Site I* and *Site II*) satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy shall be released to

Trustor for use in repairing and restoring the Project provided that sufficient funds are available to Trustor for the same, and if there are not sufficient funds available for repair and restoration, then such insurance proceeds may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary, the entire amount so collected or any part thereof, may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice;

- 5.3. 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 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 Performance Deed of Trust; and
- 5.4. to pay, before delinquent, all taxes and assessments affecting the Property; when due, 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 Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Performance Deed of Trust or the obligations secured hereby.

6. Right of Beneficiary or Trustee to Protect Security.

- 6.1. Should Trustor fail to make any payment or to do any act as herein provided, then 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 deem 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 his reasonable fees.
- 6.2. Trustor shall 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 legal rate. Any amounts so paid by Beneficiary or Trustee shall become a part of the debt secured by this Performance Deed of Trust and a lien on said premises or immediately due and payable at option of Beneficiary or Trustee.

7. Repayment of County Contribution.

7.1. Trustor agrees that the County Contribution shall become immediately due and payable to County, only upon the occurrence of the following events ("*Event of Repayment*"):

7.1.1. a breach of the Bond Covenants upon the expiration of sixty (60) days after County shall deliver to Trustor a notice of repayment or such longer period of time as shall be reasonable under the circumstances provided that Trustor shall commence the cure within such sixty (60) day period and thereafter diligently proceed to complete such cure ("*Cure Period*"); or

7.1.2. in the event that Trustor sells, contracts to sell, gives an option to purchase, conveys, transfers or alienates the Property, or suffers its title to, or any interest in the Property to be divested, whether voluntarily or involuntarily, except the following are permitted and will not constitute an Event of Repayment:

7.1.2.1. the exercise by FSL Real Estate Services of its Right of First Refusal to Purchase the Property granted to it pursuant to Internal Revenue Code Section 42(i)(7) which shall not be an Event of Repayment;

7.1.2.2. those liens described on Exhibit C attached hereto;

7.1.2.3. any sale, transfer, assignment, conveyance, hypothecation or vesting of any limited partner interests by the limited partner of the Trustor to any limited partnership or limited liability company in which the Trustor's limited partner, Wells Fargo Affordable Housing Community Development Corporation ("*Wells Fargo*") or any affiliate of Wells Fargo is the general partner or managing member, or is otherwise permitted hereunder;

7.1.2.4. the removal by the limited partner of the general partner of the Trustor and its replacement as general partner by Wells Fargo or an affiliate of Wells Fargo, which removal shall be in accordance with the terms of the organizational documents of Trustor, provided that Trustor must provide Beneficiary with advance written notice of the identity of any entity replacing the general partner unless the limited partner replaces the general partner with itself or an affiliate of itself, in which event the limited partner shall provide Beneficiary with written notice of such removal and replacement of the general partner within thirty (30) days

thereof and upon request by Beneficiary from time to time, the Trustor will provide Beneficiary with the names of all owners of partnership interests in Trustor; or

7.1.3. the commencement of a sale of the Property by a senior lienholder, either by Trustee's sale or by judicial foreclosure.

7.2. Any Partner of Trustor shall have the same right, but not the obligation to cure defaults hereunder on the same terms as Trustor. Nothing in this Section 7.2 imposes modifies or removes an obligation to cure any default.

8. Right to Sell Property.

8.1. Upon the occurrence of an Event of Repayment, and subject to the rights of any senior lender as set forth in a subordination agreement between Beneficiary and said senior lender, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold the Property under this Performance Deed of Trust. Beneficiary also shall deposit with Trustee this Performance Deed of Trust.

8.2. Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee shall sell, in the manner required by law, the Property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

8.3. 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, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums due under the terms hereof, including the County Contribution, 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.

8.4. In lieu of sale pursuant to the power of sale conferred hereby, this Performance Deed of Trust may be foreclosed in the same manner provided by law for the foreclosures of mortgages on real property. Beneficiary shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative.

- 8.5. Notwithstanding anything to the contrary herein, the personal liability of Trustor, and of any officers or member of Trustor and of any other person or entity, including Borrower's partners, to pay the principal of and interest on the County Contribution and any other agreement evidencing Trustor's obligations under the Bond Fund Contract, the Bond Covenants and this Performance Deed of Trust shall be limited to the Property, and Beneficiary shall not seek any judgment for a deficiency against Trustor, any officer or member of Trustor, or Trustor's heirs, legal representatives, successors or assigns or any other person or partner of Trustor in any action to enforce any right or remedy hereunder or under the Bond Contract.
9. **Injunctive Relief.** Trustor agrees that in the event of a breach or threatened breach of the Bond Covenants, Beneficiary or Trustee may seek to enforce such obligations and may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction against such breach or threatened breach, and Trustor hereby consents to an order permanently enjoining Trustor from violating the Bond Covenants during the term of this Performance Deed of Trust. However, no specification in this Deed of Trust of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach of a provision of this Performance Deed of Trust.
10. **Subordinate Lien.** The lien of this Performance Deed of Trust is junior and subordinate to the liens and encumbrances set forth on **Exhibit C** hereto.
11. **Miscellaneous.**
- 11.1. Successor Trustee. Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.
- 11.2. Binding Agreement. This Performance Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. In this Performance Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
- 11.3. Duties of Trustee. That Trustee accepts this Trust when this Performance Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

- 11.4. Request for Notice by Trustor. The undersigned Trustors request that a copy of any notice of Trustee's sale hereunder be mailed to each Trustor at its address hereinbefore set forth.
- 11.5. Notices. All notices to be delivered under this Performance Deed of Trust shall be by first class mail, registered mail or certified mail, postage prepaid, and delivered to the addresses set forth in this Performance Deed of Trust, unless written notice of a change of address has been delivered. All notices to Trustor shall include a notice to Trustor's limited partner as follows:

Wells Fargo Affordable Housing Community Development Corporation
301 South College Street, MAC D1053-170
Charlotte, NC 28288
Attn: Director of Tax Credit Asset Management

With a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Mr. Robert Coon

SIGNATURES ON FOLLOWING PAGES

TRUSTOR:

FSL Padre Kino Village, LP, an Arizona limited partnership

By: FSL Padre Kino, LLC, an Arizona limited liability company

Its: General Partner

By: FSL Real Estate Services, an
Arizona nonprofit corporation

Its: Sole Member

By: _____
Tom Egan, President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On _____, 2017, before me, the undersigned Notary Public, personally appeared Tom Egan, the President of FSL Real Estate Services, an Arizona non-profit corporation and the sole member of FSL Padre Kino, LLC, an Arizona limited liability company and the general partner of FSL Padre Kino Village, LP, an Arizona limited partnership, who acknowledged before me that he executed the foregoing instrument, being authorized so to do for purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

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

Chair, Board of Supervisors

Date: _____

ATTEST:

_____ Date: _____

Clerk of the Board

State of Arizona)
County of Pima) ss.

Acknowledged before me this _____ day of _____, 2017 by _____, as Chair of the Board of Supervisors of Pima County, a body politic and corporate of the State of Arizona, on behalf of the County.

Notary Public

My Commission Expires: _____

APPROVED AS TO CONTENT:

Date: _____

Margaret Kish, Director, Community Development
and Neighborhood Conservation

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Site I: Physical Address: 111 S. Church Avenue
Tucson, AZ 85701

That portion of Block 507 of "Pueblo Center Blocks 506-511" as recorded in Book 20 at Page 83, Pima County Records, located in the Northwest quarter of Section 13, Township 14 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Commencing at the centerline intersection of Broadway Boulevard and Church Avenue, said corner being a 2" brass cap stamped "RLS 19862";

Thence South 10°57'04" West 83.49 feet upon the centerline of said Church Avenue;

Thence South 79°05'50" East 51.00 feet to the West line of said Block 507, to a non-tangent curve, concave to the East, from which the radius point bears South 79°05'50" East at 949.00 feet distant;

Thence Southerly upon the West line of said Block 507, upon said non-tangent curve, turning to the left, through a delta angle of 0°54'22" and an arc length of 15.01 feet to the **Point of Beginning**;

Thence South 85°00'00" East 9.02 feet;

Thence North 00°00'00" East 37.16 feet;

Thence North 90°00'00" East 100.12 feet to the East line of said Block 507;

Thence South 04°25'46" East 78.42 feet upon said East line;

Thence South 85°37'21" West 59.40 feet;

Thence South 07°20'08" East 103.05 feet to the Southeast corner of said Block 507;

Thence South 78°03'30" West 54.03 feet upon the South line of said Block 507 to a curve, turning to the right, concave to the Northeast, with a radius of 25.00 feet;

Thence Northwesterly upon said curve through a delta angle of 103°46'09" and an arc length of 45.28 feet to the West line of said Block 507, to a compound curve, turning to the right, concave to the East, with a radius of 949.00 feet;

Thence Northerly upon said West line, upon said curve, through a delta angle of 8°10'10" and an arc length of 135.31 feet to the **Point of Beginning**.

EXCEPT any mines of gold, silver, cinnabar or copper as reserved in Patent to said land recorded August 01, 1874 in Book 2 of Deeds, Page 311.

END OF EXHIBIT A

EXHIBIT B

**BOND FUND AGREEMENT AND AMENDMENT 1 TO BOND FUND
AGREEMENT*
(WITHOUT EXHIBITS)**

* Agreement and amendment will be attached to the executed copy of the DOT

EXHIBIT C

PERMITTED LIENS

1. Deed of Trust to Wells Fargo Bank, National Association, as beneficiary, to secure repayment of a construction loan to Trustor in the approximate original principal amount of \$17,250,000.
2. Deed of Trust to Rocky Mountain Community Reinvestment Corporation, a Utah nonprofit corporation, as beneficiary, to secure repayment of permanent mortgage financing.
3. Deed of Trust to Rocky Mountain Community Reinvestment Corporation, a Utah nonprofit corporation, as beneficiary, to secure payment of certain breakage fees.
4. Either a Deed of Trust to Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona, as beneficiary, in the original principal amount of \$1,000,000 or a Deed of Trust to Wells Fargo Financial Bank, a member bank of the Federal Home Loan Bank of San Francisco, as beneficiary, in connection with a loan of Affordable Housing Program ("AHP") funds in an amount not to exceed \$1,750,000, together with any AHP Deed Restrictions.
5. Declaration of Affirmative Land Use and Restrictive Covenants executed by Trustor and the Arizona Department of Housing in connection with the low income housing tax credits.

END OF EXHIBIT C

SAMPLE AGREEMENT - NOT FOR EXECUTION

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Wells Fargo Bank, N.A.
Community Lending and Investment
MAC# E2064-075
333 S. Grand Avenue, 7th Floor
Los Angeles, CA 90071
Attn: Sandra Smith-Martin
Loan No.: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION AGREEMENT
(Pima County)

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT OR INSTRUMENTS.

THIS SUBORDINATION AGREEMENT ("**Agreement**") is made as of March __, 2017, by and among FSL PADRE KINO VILLAGE, LP, an Arizona limited partnership ("**Borrower**"), PIMA COUNTY, a body politic and corporate of the State of Arizona ("**County**"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("**Bank**").

RECITALS

A. Pursuant to that certain [Affordable Housing Bond Fund Contract, Pima County Contract No. CT-CD-_____] dated as of _____ (the "**County Agreement**"), the County has agreed to provide General Obligation Bond proceeds in the principal amount of \$604,989.00 (the "**County Funds**") to Borrower, for the purpose of, among other things, the development of affordable housing on the real property in the City of Tucson, County of Pima, State of Arizona, a portion of which is legally described in Exhibit A attached hereto and incorporated herein by this reference ("**Property**"). Borrower's obligations under the County Agreement which are secured by that certain Performance Deed of Trust Affordable Housing Bond Program (the "**County Deed of Trust**"), dated as of _____, 2017 and recorded on _____, 2017 as Instrument No. _____ in the Official Records of the County of Pima, Arizona (the "**Official Records**"). The County Deed of Trust imposes certain restrictions on the Property.

B. The County Agreement, the County Deed of Trust and any and all documents executed by and between Borrower and County with respect to the County Funds are collectively referred to herein as the "**County Documents**."

C. Pursuant to that certain Building Loan Agreement by and between Borrower and Bank (the "**Bank Loan Agreement**"), dated as of March __, 2017, Bank has agreed to make a loan to Borrower (the "**Bank Loan**"), for the construction of certain improvements on the Property.

D. The obligations of Borrower for repayment of the Loan are evidenced by a promissory note (the "**Bank Note**") in the amount of _____ and No/100 Dollars (\$_____.00) and are secured by, among other things, a Construction Deed of Trust with Absolute Assignment of Rents, Security Agreement and Fixture Filing dated as of March __, 2017 (the "**Deed of Trust**") executed by Borrower, as trustee, for the benefit of Bank, as beneficiary. The Deed of Trust is to be recorded in the Official Records. The Loan Agreement, the Note, the Deed of Trust and all other documents evidencing or otherwise relating to the Loan are collectively referred to herein as "**Bank Loan Documents**".

E. As a condition to Bank making the Bank Loan secured by the Bank Deed of Trust, Bank requires that the Bank Deed of Trust be unconditionally and at all times remain a lien or charge upon the Property, prior and superior to all the rights of County under the County Deed of Trust and County's rights under the County Agreement, and any other County Documents, and that County specifically and unconditionally subordinate the County Deed of Trust, the County's rights under the County Agreement, and any other County Documents to the lien or charge of the Bank Deed of Trust.

F. The Bank Loan and the County Funds are being extended to Borrower to finance the construction of an affordable housing project (the "Improvements") on Borrower's interest in the Property.

G. County and Borrower agree to the subordinations in favor of Bank described in the recitals above.

AGREEMENT

THEREFORE, for valuable consideration and to induce Bank to make the Loan, County and Borrower hereby agree for the benefit of Bank as follows:

1. Subordination. Bank's Bank Deed of Trust securing the Bank Note in favor of Bank, and any modifications, renewals or extensions thereof, together with Bank's right to repayment of the Bank Loan and Bank's rights under any other Bank Loan Documents, shall unconditionally be and at all times remain a lien or charge on the Property prior and superior to the County Deed of Trust and County's rights under the County Agreement and any other County Documents subject to the terms of this Agreement.

2. Entire Agreement. This Agreement shall be the whole agreement with regard to the priority and subordination of the County Deed of Trust, the County's rights under the County Agreement and any other County Documents, to the lien or charge of the Bank Deed of Trust, together with Bank's rights to repayment of the Bank Loan and Bank's rights under any other Bank Loan Documents, and shall supersede and cancel, but only insofar as would affect the priority of the Bank Deed of Trust, any prior agreements as to such subordination including, without limitation, those provisions, if any, contained in the County Documents which provide for the subordination of the County Deed of Trust or any other County Document to a deed or deeds of trust or to a mortgage or mortgages.

3. Application of Proceeds. Bank, in making disbursements pursuant to any such agreement, is under no obligation or duty to, nor has Bank represented that it will, see to the application of such proceeds by the person or persons to whom Bank disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part.

4. Consents. County and Bank respectively declare, agree and acknowledge that:

(a) County and Borrower consent to and approve all agreements between Borrower and Bank for the disbursement of the proceeds of the Bank Loan submitted to County and Borrower prior to the execution of this Agreement; and

(b) County and Borrower intentionally and unconditionally waive, relinquish and subordinate the lien or charge of the instruments securing the performance of Borrower under the County Documents, in favor of the Bank's liens or charges of the Bank Deed of Trust and other Bank Loan Documents upon the Property and Improvements as referred to in this Agreement and understand that in reliance upon, and in consideration of, such waiver, relinquishment and subordination, specific loans and advances are being and will be made, and specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

5. Rights Upon Default. Notwithstanding anything to the contrary contained in this Agreement, Bank hereby agrees as follows:

(a) Upon the occurrence of an event of default under the Bank Loan Documents, Bank shall promptly notify County at its address set forth below of the occurrence of such event of default, which notification shall be provided to County contemporaneously with the delivery to Borrower of any notice of default under the Bank Loan Documents;

(b) County shall have the right (i) to receive any notices of default under the Bank Loan Documents and (ii) to cure any default by the Borrower under the Bank Loan Documents within ninety (90) days after its respective receipt of such notice of default under the Bank Loan Documents;

(c) After a default under the Bank Loan Documents but prior to a foreclosure sale or deed in lieu of assignment of the Property and Improvements thereunder, if County cures the default on a timely basis within the cure periods which apply to the Borrower pursuant to the Bank Loan Documents, Bank will not exercise any right it may have to accelerate the Bank Note by reason of the default so cured. This paragraph 5(c) shall not be deemed to prohibit Bank from accelerating the Bank Note by reason of a later uncured default; and

(d) If County forecloses its deed of trust or accepts a conveyance of the Property in lieu of such foreclosure, Bank shall have the right to declare a default under the "due-on-sale" provisions contained in the Bank Loan Documents and accelerate the indebtedness secured thereby and implement remedies thereunder, unless Bank approves of the transfer of the Property to the purchaser at foreclosure of the County Deed of Trust or the recipient of a conveyance of the Property in lieu of such foreclosure, which approval may be granted, conditioned or withheld in Bank's sole discretion.

6. Standstill. County declares, agrees, and acknowledges that it will not, without prior written notice to Bank: (i) commence any action to foreclose or exercise any power of sale under the County Deed of Trust or the County Documents; (ii) accept a deed or assignment in lieu of foreclosure for the Property or any part or portion thereof; (iii) take possession or control of the Property, or collect or accept any rents from the Property; (iv) seek or obtain appointment of a receiver for the Property; (v) take any action that would terminate any leases or other rights held by or granted to or by third parties with respect to the Property; (vi) initiate any petition for bankruptcy, assignment for the benefit of creditors or creditor's agreement with respect to the Borrower other than as provided in the County Documents; or (vii) take any other enforcement action against the Property or any part or portion thereof, provided, however, that upon the occurrence of an event of default under the County Documents, County shall have the continuing right to commence to pursue its remedies under the County Documents on account of such default during any cure period allowed by the County Documents, including the right to record a notice of default and to obtain a receiver. In addition, County may, with notice to, but without the consent of the Bank, take such other enforcement action as County shall determine, including, but not limited to, action for specific performance of the obligations of the Borrower under the County Documents. The provisions of this Section 6 shall apply for one hundred twenty (120) days from the date that Bank receives notice of a default under the County Documents.

7. Subrogation. Neither County nor its respective successors and assigns shall acquire by subrogation, contract or otherwise any lien upon any other estate, right or interest in the Property or Improvements (except any which may arise in respect to real estate taxes, assessments or other governmental charges) which is or may be prior in right to Bank's Bank Deed of Trust or other Bank Loan Documents, or any extension, consolidation, modification or supplement thereto, unless within sixty (60) days following written notice of such intention by County or its respective successors or assigns, the then holder of the Bank Deed of Trust or security instrument shall fail or refuse to purchase or acquire by subrogation or otherwise such prior lien, estate, right or interest, or shall fail within such period to commence and thereafter proceed diligently to purchase or acquire the same.

8. Insurance and Condemnation Proceeds. Notwithstanding any contrary provisions in the County Documents, the determination as to whether proceeds of policies of insurance covering the

Property or awards from proceedings in eminent domain may be released for application to costs of restoration of the Property and Improvements shall be made by the Bank as the senior-most lender in the order of lien priority. If not so applied, the proceeds of all policies of insurance covering the Property or Improvements or any awards from proceedings in eminent domain or condemnation relating to the Property shall be applied toward the Bank Loan and the County Funds in the order of lien priority until such obligation is paid in full. In the event that, following any such application and disposition of the insurance proceeds, condemnation award or other compensation, resulting in full repayment of all indebtedness secured by the Bank Loan Documents, any balance remains, and the Bank has no further obligation to disburse any portion of the Bank Loan, then such excess shall be made payable to the junior lender next in line following the order of lien priority until the excess insurance proceeds are exhausted.

9. Restoration. Notwithstanding any contrary provision in the County Documents, if the legal holder of the Bank Loan Documents shall at any time release to Borrower any such insurance proceeds or condemnation award for the purpose of restoration of the Property or Improvements, such release shall not be deemed to be an additional advance under the Bank's Bank Loan Documents nor shall such release otherwise be deemed to be in violation of any restriction upon any amount permitted to be secured by the Bank's Bank Loan Documents.

10. Further Assurances. So long as the Bank's Bank Loan Documents shall remain a lien upon the Property or Improvements or any part thereof, County and its respective successors or assigns, shall execute, acknowledge and deliver, upon the Bank's demand, at any time or times, any and all further subordinations, agreements or other instruments in recordable form reasonably sufficient for that purpose or that Bank, its successors or assigns may hereafter reasonably require for carrying out the purpose and intent of this Agreement, so long as such further instruments do not contain provisions inconsistent with the terms and conditions of the County Documents.

11. Confirmation. County hereby confirms to and agrees with Bank, and Bank hereby confirms to and agrees with County, as to the following:

(a) Each of Bank and County has delivered to each other, true and complete copies of its documents, and such documents have not been amended, modified or supplemented in any way.

(b) There are no defaults (or conditions or events which, with notice or the passage of time or both, would constitute a default), known to either County or Bank as of the date hereof, by Borrower under its obligations set forth in each's respective documents.

(c) Neither Bank nor County shall enter into any agreement to materially amend or modify the terms of any of their respective liens without notice to and the consent of each other, which consent shall not be unreasonably withheld.

(d) Both Bank and County shall deliver to each other Lender, at the address indicated in Section 12 below, copies of any notices of default delivered to Borrower in connection with each's respective documents.

12. Notices. All notices of any kind which any party hereto may be required or may desire to serve on the others shall be deemed served upon personal delivery, or, if mailed, upon the first to occur of receipt or the expiration of 72 hours after deposit in United States Postal Service, certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Bank:	Wells Fargo Bank, National Association
	Community Lending and Investment
	MAC# E2064-075
	333 S. Grand Avenue, 7 th Floor
	Los Angeles, CA 90071
	Attn: Sandra Smith-Martin

Loan No.: _____

If to County: Pima County
Neighborhood Reinvestment Program
Community and Economic Development
2797 East Ajo Way
Tucson, AZ 85713-6223
Attn: _____

If to Borrower: FSL Padre Kino Village, LP
c/o FSL Real Estate Services
1201 East Thomas Road
Phoenix, AZ 85014
Attention: Tom Egan

13. Modification and Release. Bank may, without affecting the subordination of the County Documents: (a) release or compromise any obligation of any nature with respect to the Bank Loan Documents; (b) release its security interest in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing repayment of the Bank Note; (c) retain or obtain a security interest in any property to secure payment of the Bank Note; or (d) modify, amend, defer, extend, consolidate or supplement any of the original or subsequent Bank Loan Documents; provided, however, that Bank shall not increase the principal amount of the Bank Note without the prior written consent of County.

14. Priority of Payments. In the event of any judicial or nonjudicial sale of the Property or any of the collateral securing the Bank Loan, or any portion thereof, pursuant to the Bank Loan Documents, or of any liquidation or dissolution of Borrower, or of any execution sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or similar proceeding relating to Borrower or any portion of its property, all amounts due under the Bank Loan Documents shall first be paid in full according to the order of lien priority before any payment is made upon or in respect of the obligations under the County Documents.

15. Application of Sections. The provisions of Sections 13 and 14 above are solely for the purpose of defining the relative rights of Bank on the one hand, and County on the other hand, against Borrower and its property and nothing herein shall impair, as between (i) Borrower and Bank and (ii) Borrower and County, the obligations of Borrower under such documents.

16. Event of Default. The parties acknowledge that any default under the County Documents (other than defaults that are timely cured by Borrower or waived by County) shall constitute a default under the Bank Loan Documents and any default under the Bank Loan Documents (other than defaults that are timely cured by Borrower or waived by Bank) shall constitute a default under the County Documents. Notwithstanding the foregoing, in the event of default under the County Documents which is deemed a default under such documents solely because it is a default under the Bank Loan Documents, County agrees not to begin pursuing its available remedies unless and until the Bank has accelerated the Bank Loan or has taken other affirmative action to exercise its rights and remedies under the Bank Loan Documents, beyond the giving of notice of such default.

17. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one original Agreement.

18. Time of Essence. Time is of the essence of this Subordination Agreement and each and every term thereof.

19. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona, without regard to the choice of law rules of that state, except to the extent that any of such laws may now or hereafter be preempted by Federal law. Borrower and all persons and entities in any manner obligated to Bank under this Agreement (a) consent to the jurisdiction of any Federal or State Court within the State of Arizona, (b) submit to venue in such state, and (c) consent to service of process by any means authorized by Federal law or the law of such state. Without limiting the generality of the foregoing, Borrower hereby waives and agrees not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) any Borrower is not subject to the jurisdiction of the courts of the State of Arizona or the United States District Court for such state; (ii) that such suit, action, or proceeding is brought in an inconvenient forum; or (iii) that the venue of such suit, action, or proceeding is improper.

20. ARS Section 38-511 Notice. 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. Notwithstanding the foregoing, Borrower and Bank, to the best of their respective knowledge, each acknowledge and agree that no person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement or any other contract that is part of the County Documents on behalf of the State of Arizona, its political subdivisions or any of the departments or agencies of either is or will be, at any time while any of the County Documents or any extension of the County Documents is in effect, an employee or agent of Borrower or Bank in any capacity or a consultant to Borrower or Bank with respect to the subject matter of any of the County Documents.

NOTICE: THIS AGREEMENT CONTAINS PROVISIONS WHICH ALLOW THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN LOANS WHICH MAY BE OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT OR INSTRUMENTS AND THE PROCEEDS OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

BORROWER:

FSL PADRE KINO VILLAGE, LP,
an Arizona limited partnership

By: FSL Padre Kino, LLC,
an Arizona limited liability company
Its General Partner

By: FSL Real Estate Services,
an Arizona nonprofit corporation
Its Sole Member

By: _____
Tom Egan
President

STATE OF ARIZONA)
) ss.
County of Pima)

On this _____ day of _____, 2017, before me, _____, a
Notary Public in and for said State, personally appeared Tom Egan, the President of FSL Real Estate
Services, an Arizona nonprofit corporation, the Sole Member of FSL Padre Kino, LLC, an Arizona limited
liability company, the General Partner of FSL Padre Kino Village, LP, an Arizona limited partnership ☐
personally known or me or ☐ proved to me on basis of satisfactory evidence to be the person whose
name is subscribed to the within instrument and acknowledged to me that he/she executed the same in
his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

Signature

My commission expires _____.

COUNTY:

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

By: _____
Name: _____
Title: Chair, Board of Supervisors

ATTEST:

Clerk of the Board

APPROVED AS TO CONTENT:

Margaret Kish, Director
Community Development & Neighborhood
Conservation Department

APPROVED AS TO FORM:

Karen S. Friar, Deputy County Attorney

STATE OF ARIZONA)
) ss.
County of Pima)

On this _____ day of _____, 2017, before me, _____, a
Notary Public in and for said State, personally appeared _____, the _____
of Pima County, Arizona, ☐ personally known or me or ☐ proved to me on basis of satisfactory evidence
to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the
person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

Signature

My commission expires _____.

BANK:

WELLS FARGO BANK, NATIONAL ASSOCIATION
a national banking association

By:

Christian M. von Merkatz
Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT B



SEQUENCE: 20171300573
No. Pages: 39
5/10/2017 4:45 PM

F. ANN RODRIGUEZ, RECORDER
Recorded By: KAL (e-recording)



When Recorded, Please Return To:

Affordable Housing Program
Community Development and Neighborhood Conservation Department
Pima County
2797 East Ajo Way
Tucson, AZ 85713-6223

PERFORMANCE DEED OF TRUST AFFORDABLE HOUSING BOND PROGRAM

Date: March 31, 2017

1. Definitions

- 1.1. Trustor. FSL Padre Kino Village, LP, an Arizona limited partnership, whose mailing address is 1201 East Thomas Road, Phoenix, Arizona 85014.
- 1.2. Trustee. Chicago Title Insurance Company, whose mailing address is: 14200 N. Northsight Blvd., Suite 100, Scottsdale, AZ 85260.
- 1.3. Beneficiary or County. Pima County, a body politic and corporate of the State of Arizona, whose mailing address is: Pima County Community Development and Neighborhood Conservation Department, 2797 East Ajo Way, Tucson, AZ 85713-6223.
- 1.4. Parties. Trustor, Trustee and Beneficiary are collectively the Parties, and individually a Party.
- 1.5. Property. The real property situated in the County of Pima, State of Arizona, as described in **Exhibit A** attached hereto and made a part hereof, together with all buildings, improvements and fixtures thereon or hereinafter erected thereon. Street address of the Property:

111 S. Church Avenue, Tucson, AZ 85701

- 1.6. Project. A total of eighty-three (83) affordable rental housing units for seniors (age 62 and older) called "The Marist on Cathedral Square", developed as follows:
 - 1.6.1. **Site I**: The Tucson Catholic Diocese office building located at 111 S. Church Avenue will be demolished and replaced by a new, seven-story building with sixty-five (65) one-bedroom apartments, ten (10) two-bedroom apartments and other community amenities; and

- 1.6.2. Site II. The historic Marist College, built in 1915, located on the corner of Ochoa Street and Church Avenue will be restored, stabilized and renovated with eight (8) one-bedroom apartments and other community amenities.
- 1.7. Bond Fund Contract. The Affordable Housing Bond Fund Contract, Pima County Contract No. CT-CD-17*190, between Trustor and Beneficiary for the construction of the Project, as described in **Exhibit B** attached hereto (without Exhibits) and made a part hereof.
- 1.8. Bond Covenants. The following are Bond Covenants for purposes of this Performance Deed of Trust:
 - 1.8.1. Performance pursuant to the terms and conditions of the Bond Fund Contract.
 - 1.8.2. Affordability Period. Thirty-eight (38) of the apartments at *Site I* and five (5) of the apartments at *Site II* will maintained and rented to qualified households for a **minimum of thirty (30) years** from the date all of the following have occurred:
 - 1.8.2.1. The Project is completed;
 - 1.8.2.2. All 83 apartment units have received the final certificate of occupancy from the City of Tucson; and
 - 1.8.2.3. At least thirty-eight (38) of the 75 apartment units at *Site I* and five (5) of the apartment units at *Site II* have been leased to qualified households.
 - 1.8.3. Qualified Household. A “qualified household” is a household with:
 - 1.8.3.1. A household income at or below 80% Area Median Income (“AMI”) as defined by the U.S. Department of Housing and Urban Development at initial occupancy; and
 - 1.8.3.2. At least one member of the household is age 62 or older.
 - 1.8.4. The Affordability Period will remain in full force and effect regardless of any changes in ownership of the Property.
 - 1.8.5. Trustor will provide County with written notice and proof of the commencement date of the Affordability Period.
- 1.9. County Contribution. The sum of Six Hundred Four Thousand Nine Hundred Eighty-nine Dollars (**\$604,989.00**) (“the County Contribution”), which is the amount contributed by Beneficiary towards the Project.

2. **Grant of Property.** Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee in Trust, with power of sale, the Property, together with leases, rents, issues, profits, or income therefrom (all of which are "*Property Income*"), subject to:
 - 2.1. the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and
 - 2.2. 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.
3. **Security.** The grant pursuant to Paragraph 2 above is for the purpose of securing:
 - 3.1. performance of the Bond Covenants;
 - 3.2. the County Contribution, provided that the Parties hereto acknowledge and agree Trustor has no obligation to repay the County Contribution to Beneficiary except as provided in the Bond Fund Contract and this Performance Deed of Trust; and
 - 3.3. performance of each agreement of Trustor herein contained.
4. **Termination of Deed of Trust.** Notwithstanding any other provision of this Performance Deed of Trust, this Performance Deed of Trust will terminate at the end of the Affordability Period. After the expiration of the Affordability Period, Beneficiary will execute a release of this Performance Deed of Trust within thirty (30) days after receiving a written request from Trustor.
5. **Obligations of Trustor to Protect Security.** To protect the security of this Performance Deed of Trust, Trustor agrees:
 - 5.1. to keep the Property and the Project (both *Site I* and *Site II*) 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 and the Project or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon the Property or the Project in violations of law; and do all other acts which from the character or use of the Property and the Project may be reasonably necessary, the specific enumerations herein not excluding the general;
 - 5.2. to provide, maintain, and deliver to Beneficiary, fire insurance for the Project (both *Site I* and *Site II*) satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy shall be released to

Trustor for use in repairing and restoring the Project provided that sufficient funds are available to Trustor for the same, and if there are not sufficient funds available for repair and restoration, then such insurance proceeds may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary, the entire amount so collected or any part thereof, may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice;

- 5.3. 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 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 Performance Deed of Trust; and
- 5.4. to pay, before delinquent, all taxes and assessments affecting the Property; when due, 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 Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Performance Deed of Trust or the obligations secured hereby.

6. Right of Beneficiary or Trustee to Protect Security.

- 6.1. Should Trustor fail to make any payment or to do any act as herein provided, then 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 deem 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 his reasonable fees.
- 6.2. Trustor shall 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 legal rate. Any amounts so paid by Beneficiary or Trustee shall become a part of the debt secured by this Performance Deed of Trust and a lien on said premises or immediately due and payable at option of Beneficiary or Trustee.

7. Repayment of County Contribution.

7.1. Trustor agrees that the County Contribution shall become immediately due and payable to County, only upon the occurrence of the following events ("*Event of Repayment*"):

7.1.1. a breach of the Bond Covenants upon the expiration of sixty (60) days after County shall deliver to Trustor a notice of repayment or such longer period of time as shall be reasonable under the circumstances provided that Trustor shall commence the cure within such sixty (60) day period and thereafter diligently proceed to complete such cure ("*Cure Period*"); or

7.1.2. in the event that Trustor sells, contracts to sell, gives an option to purchase, conveys, transfers or alienates the Property, or suffers its title to, or any interest in the Property to be divested, whether voluntarily or involuntarily, except the following are permitted and will not constitute an Event of Repayment:

7.1.2.1. the exercise by FSL Real Estate Services of its Right of First Refusal to Purchase the Property granted to it pursuant to Internal Revenue Code Section 42(i)(7) which shall not be an Event of Repayment;

7.1.2.2. those liens described on Exhibit C attached hereto;

7.1.2.3. any sale, transfer, assignment, conveyance, hypothecation or vesting of any limited partner interests by the limited partner of the Trustor to any limited partnership or limited liability company in which the Trustor's limited partner, Wells Fargo Affordable Housing Community Development Corporation ("*Wells Fargo*") or any affiliate of Wells Fargo is the general partner or managing member, or is otherwise permitted hereunder;

7.1.2.4. the removal by the limited partner of the general partner of the Trustor and its replacement as general partner by Wells Fargo or an affiliate of Wells Fargo, which removal shall be in accordance with the terms of the organizational documents of Trustor, provided that Trustor must provide Beneficiary with advance written notice of the identity of any entity replacing the general partner unless the limited partner replaces the general partner with itself or an affiliate of itself, in which event the limited partner shall provide Beneficiary with written notice of such removal and replacement of the general partner within thirty (30) days

thereof and upon request by Beneficiary from time to time, the Trustor will provide Beneficiary with the names of all owners of partnership interests in Trustor; or

7.1.3. the commencement of a sale of the Property by a senior lienholder, either by Trustee's sale or by judicial foreclosure.

7.2. Any Partner of Trustor shall have the same right, but not the obligation to cure defaults hereunder on the same terms as Trustor. Nothing in this Section 7.2 imposes modifies or removes an obligation to cure any default.

8. Right to Sell Property.

8.1. Upon the occurrence of an Event of Repayment, and subject to the rights of any senior lender as set forth in a subordination agreement between Beneficiary and said senior lender, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold the Property under this Performance Deed of Trust. Beneficiary also shall deposit with Trustee this Performance Deed of Trust.

8.2. Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee shall sell, in the manner required by law, the Property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

8.3. 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, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums due under the terms hereof, including the County Contribution, 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.

8.4. In lieu of sale pursuant to the power of sale conferred hereby, this Performance Deed of Trust may be foreclosed in the same manner provided by law for the foreclosures of mortgages on real property. Beneficiary shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative.

- 8.5. Notwithstanding anything to the contrary herein, the personal liability of Trustor, and of any officers or member of Trustor and of any other person or entity, including Borrower's partners, to pay the principal of and interest on the County Contribution and any other agreement evidencing Trustor's obligations under the Bond Fund Contract, the Bond Covenants and this Performance Deed of Trust shall be limited to the Property, and Beneficiary shall not seek any judgment for a deficiency against Trustor, any officer or member of Trustor, or Trustor's heirs, legal representatives, successors or assigns or any other person or partner of Trustor in any action to enforce any right or remedy hereunder or under the Bond Contract.
9. **Injunctive Relief.** Trustor agrees that in the event of a breach or threatened breach of the Bond Covenants, Beneficiary or Trustee may seek to enforce such obligations and may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction against such breach or threatened breach, and Trustor hereby consents to an order permanently enjoining Trustor from violating the Bond Covenants during the term of this Performance Deed of Trust. However, no specification in this Deed of Trust of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach of a provision of this Performance Deed of Trust.
10. **Subordinate Lien.** The lien of this Performance Deed of Trust is junior and subordinate to the liens and encumbrances set forth on **Exhibit C** hereto.
11. **Miscellaneous.**
- 11.1. Successor Trustee. Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.
- 11.2. Binding Agreement. This Performance Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. In this Performance Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
- 11.3. Duties of Trustee. That Trustee accepts this Trust when this Performance Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

- 11.4. Request for Notice by Trustor. The undersigned Trustors request that a copy of any notice of Trustee's sale hereunder be mailed to each Trustor at its address hereinbefore set forth.
- 11.5. Notices. All notices to be delivered under this Performance Deed of Trust shall be by first class mail, registered mail or certified mail, postage prepaid, and delivered to the addresses set forth in this Performance Deed of Trust, unless written notice of a change of address has been delivered. All notices to Trustor shall include a notice to Trustor's limited partner as follows:

Wells Fargo Affordable Housing Community Development Corporation
301 South College Street, MAC D1053-170
Charlotte, NC 28288
Attn: Director of Tax Credit Asset Management

With a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Mr. Robert Coon

SIGNATURES ON FOLLOWING PAGES

FSL Padre Kino Village, LP, an Arizona limited partnership

By: FSL Real Estate Services, an
Arizona nonprofit corporation
Its: Sole Member

By: Tom Egan
Tom Egan, President

STATE OF ARIZONA)
County of Maricopa) ss.

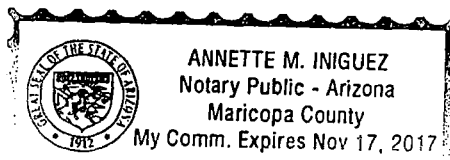
On March 2, 2017, before me, the undersigned Notary Public, personally appeared Tom Egan, the President of FSL Real Estate Services, an Arizona non-profit corporation and the sole member of FSL Padre Kino, LLC, an Arizona limited liability company and the general partner of FSL Padre Kino Village, LP, an Arizona limited partnership, who acknowledged before me that he executed the foregoing instrument, being authorized so to do for purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Arnetta M. Davis
Notary Public

My Commission Expires:

11/17/2017



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

Sharon Bronson

Chair, Board of Supervisors

Date: MAR 21 2017

ATTEST:

R. Castañeda

Date: MAR 21 2017

Clerk of the Board

State of Arizona)

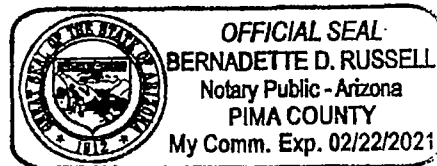
) ss.

County of Pima)

Acknowledged before me this 21st day of March, 2017 by Sharon Bronson, as Chair of the Board of Supervisors of Pima County, a body politic and corporate of the State of Arizona, on behalf of the County.

Bernadette D. Russell
Notary Public

My Commission Expires: 2-22-21



APPROVED AS TO CONTENT:

Margaret H. Kish

Margaret Kish, Director, Community Development
and Neighborhood Conservation

Date: MARCH 29 2017

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Site I: Physical Address: 111 S. Church Avenue
Tucson, AZ 85701

That portion of Block 507 of "Pueblo Center Blocks 506-511" as recorded in Book 20 at Page 83, Pima County Records, located in the Northwest quarter of Section 13, Township 14 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Commencing at the centerline intersection of Broadway Boulevard and Church Avenue, said corner being a 2" brass cap stamped "RLS 19862";

Thence South $10^{\circ}57'04''$ West 83.49 feet upon the centerline of said Church Avenue;

Thence South $79^{\circ}05'50''$ East 51.00 feet to the West line of said Block 507, to a non-tangent curve, concave to the East, from which the radius point bears South $79^{\circ}05'50''$ East at 949.00 feet distant;

Thence Southerly upon the West line of said Block 507, upon said non-tangent curve, turning to the left, through a delta angle of $0^{\circ}54'22''$ and an arc length of 15.01 feet to the **Point of Beginning**;

Thence South $85^{\circ}00'00''$ East 9.02 feet;

Thence North $00^{\circ}00'00''$ East 37.16 feet;

Thence North $90^{\circ}00'00''$ East 100.12 feet to the East line of said Block 507;

Thence South $04^{\circ}25'46''$ East 78.42 feet upon said East line;

Thence South $85^{\circ}37'21''$ West 59.40 feet;

Thence South $07^{\circ}20'08''$ East 103.05 feet to the Southeast corner of said Block 507;

Thence South $78^{\circ}03'30''$ West 54.03 feet upon the South line of said Block 507 to a curve, turning to the right, concave to the Northeast, with a radius of 25.00 feet;

Thence Northwesterly upon said curve through a delta angle of $103^{\circ}46'09''$ and an arc length of 45.28 feet to the West line of said Block 507, to a compound curve, turning to the right, concave to the East, with a radius of 949.00 feet;

Thence Northerly upon said West line, upon said curve, through a delta angle of $8^{\circ}10'10''$ and an arc length of 135.31 feet to the **Point of Beginning**.

EXCEPT any mines of gold, silver, cinnabar or copper as reserved in Patent to said land recorded August 01, 1874 in Book 2 of Deeds, Page 311.

END OF EXHIBIT A

EXHIBIT B

**BOND FUND AGREEMENT AND AMENDMENT 1 TO BOND FUND
AGREEMENT**

(WITHOUT EXHIBITS)

**PIMA COUNTY COMMUNITY DEVELOPMENT AND
NEIGHBORHOOD CONSERVATION DEPARTMENT**

**PROJECT: THE MARIST ON CATHEDRAL SQUARE
SENIOR RENTAL HOUSING PROJECT**

DEVELOPER: FSL Padre Kino Village, LP
1201 E. Thomas Road
Phoenix, AZ 85014-5734

CONTRACT TERM: January 17, 2017 to December 31,
2018

AMOUNT: \$604,989.00

FUNDING: 2004 Affordable Housing General Obligation
Bond Sale Proceeds

CONTRACT

NO. CT. CD-17-190

AMENDMENT NO. _____

This number must appear on all
invoices, correspondence and
documents pertaining to this
contract.

This Contract is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and FSL Padre Kino Village, LP, an Arizona limited partnership ("Partnership" and together with County, the "Parties").

RECITALS

- A. In an election held on May 18, 2004 (2004 Special Bond Election), Pima County voters authorized the sale of bonds and use of proceeds for, *inter alia*, acquiring, developing, expanding, improving and equipping new and existing facilities to further the health, education, welfare and safety of the citizens of the County, including, without limitation, housing and other improvements and facilities to further neighborhood reinvestment.
- B. In compliance with Pima County Code Chapter 3.06, titled Bonding Disclosure, Accountability and Implementation, the Board of Supervisors adopted Ordinance No. 2004-18, the Bond Implementation Plan, May 18, 2004 Special Election (the "2004 Bond Ordinance").
- C. Section VII(B)(1)(c)(2.10) of the 2004 Bond Ordinance allocates ten million dollars (\$10,000,000.00) in bond proceeds to be issued for investment in projects that expand home ownership opportunities and provide access to affordable housing for low-income residents of Pima County. Pursuant to A.R.S. § 11-381, County is using these funds to assist with affordable housing projects being carried out by others.
- D. Pima County Community Development and Neighborhood Conservation Department, in conjunction with the Pima County Housing Commission, solicited applications and conducted an evaluation process to select qualified projects involving the construction, rehabilitation, or preservation of housing that is affordable to households in Pima County with income at or below 80% of the Area Median Income ("AMI") as determined by the U.S. Department of Housing and Urban Development ("HUD") income guidelines.
- E. Partnership has FSL Padre Kino, LLC, an Arizona limited liability company ("General Partner") as its sole general partner, which is wholly owned by FSL Real Estate Services, an Arizona non-profit 501(c)(3) corporation, as its sole member. The General Partner will hold a 0.01% ownership interest in Partnership and Wells Fargo Affordable Housing Community Development Corporation will serve as Partnership's Limited Partner, with a 99.99% ownership interest in Partnership.

- F. Developer submitted a proposal ("Proposal") requesting **\$604,989.00** in Housing Bond sales proceeds to provide affordable housing on two parcels in downtown Tucson to be known as "***The Marist on Cathedral Square***" (the "Project").
- G. the Project will provide a total of eighty-three (83) affordable housing units for seniors (age 62 and older), as follows:
1. **Site I:** The Tucson Catholic Diocese office building located at 111 S. Church Avenue will be demolished and replaced by a new, seven-story building with sixty-five (65) one-bedroom apartments, ten (10) two-bedroom apartments and other community amenities; and
 2. **Site II:** The historic Marist College, built in 1915, located on the corner of Ochoa Street and Church Avenue, will be restored, stabilized and renovated with eight (8) one-bedroom apartments and other community amenities.
- H. The Pima County Housing Commission recommended that the Pima County Board of Supervisors award \$604,989.00 of 2004 General Obligation Bond Proceeds to Partnership for the Project.
- I. On May 3, 2016, the Pima County Board of Supervisors approved an allocation of 2004 General Obligation Bond Proceeds, through the Pima County Housing Trust Fund, in an amount not to exceed **\$604,989.00** to Partnership to assist with actual, documented, Project-related expenses.

NOW THEREFORE, County and Partnership, pursuant to the above, and in consideration of the terms and agreements hereinafter set forth, do mutually agree as follows:

AGREEMENT

1.0 TERM AND AMENDMENTS

- 1.1 The term of this Contract will begin on January 17, 2017 and will remain in effect until December 31, 2018, unless sooner terminated or extended pursuant to the terms set forth herein.
- 1.2 Except as set forth in paragraph 1.4 below and in the Neighborhood Reinvestment and Affordable Housing Program Substantial Change Process set forth in Exhibit A, any modification of the Contract must be by formal written amendment executed by the Parties hereto.
- 1.3 Any amendments to the Contract must be approved by the County before any services under the amendment commence.
- 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 which do **NOT**:
 - 1.4.1 Change the specified purpose or outcomes;
 - 1.4.2 Increase the total compensation provided through this Contract; and
 - 1.4.3 In any way increase the direct or indirect liability of the County under this Contract.

2.0 SCOPE OF SERVICES

- 2.1 **Purpose.** This Contract sets forth the roles and responsibilities of the Parties for the design, construction, maintenance and operation of ***The Marist on Cathedral Square*** ("the Project") and addresses legal and administrative matters among the Parties.
- 2.2 **Project.** In consideration for the bond proceeds provided under this Contract, Partnership will design, build, maintain and rent affordable housing units on two separate parcels as set forth in Partnership's Project Narrative received on March 1, 2016 and attached as Exhibit B and as follows:

2.2.1 **Site I: 111 S. Church Avenue, Pima County Tax Parcel No. 117-20-015A.** Partnership warrants that it holds title to this property. Partnership will:

2.2.1.1 Demolish the existing office building;

2.2.1.2 Construct a new, seven-story affordable residential building to include:

2.2.1.2.1. Seventy-five (75) apartments:

2.2.1.2.1.1. Sixty-five (65) one-bedroom, one-bath, kitchen and living area, approximately 650 square feet;

2.2.1.2.1.2. Ten (10) two-bedroom, one bath, kitchen and living area, approximately 820 square feet;

2.2.1.2.2. Each residential floor will have:

2.2.1.2.2.1. A laundry room;

2.2.1.2.2.2. A furnished get-together room for tenants to socialize; and

2.2.1.2.2.3. Chutes for garbage and recycling.

2.2.1.2.3. Additional community amenities will include:

2.2.1.2.3.1. First floor lobby, manager's office, non-perishable food pantry, rest rooms, and maintenance shop; and

2.2.1.2.3.2. Top floor furnished community room, gym and covered recreational outdoor patio space.

2.2.1.2.4. Twenty-eight (28) reserved tenant parking spaces in a secured ground-floor garage. Tenants will not be charged to park.

2.2.2 **Site II: The Marist College Building, 235 S. Church Avenue, Pima County Tax Parcel No. 117-13-156C.** Partnership:

2.2.2.1 Has entered into that certain Marist on Cathedral Square Lease dated March 31, 2016 with St. Augustine Cathedral Roman Catholic Parish – Tucson, an Arizona nonprofit corporation, as “Landlord” (the “Marist Lease”). The Marist Lease is for a term of 55 years, which is greater than the Pima County Affordability Period set forth in paragraph 2.7.2 below. To satisfy the requirements for the provision of bond sales proceeds, the Marist Lease must be irrevocable for the Pima County Affordability period, except for the specific events of default set forth in the Marist Lease as of March 31, 2016. In the event that Partnership allows an event of default to occur, and such default causes revocation of the lease prior to the expiration of the Pima County Affordability Period, Partnership must, within thirty (30) days of lease revocation, remit to County \$58,312.19 (8/83 of the Maximum Allocated Amount set forth in paragraph 3.1 below). The payment of \$58,312.19 to County, in the event of the Marist Lease termination, is not in addition to payment of the total Maximum Allocated Amount required upon the occurrence of an Event of Repayment under the Performance Deed of Trust executed pursuant to paragraph 2.7.3 below;

2.2.2.2 Will restore, stabilize and rehabilitate the exterior of the building to match, as closely as possible, the original historic 1915 architecture and façade;

- 2.2.2.3 Will repair and restore adobe walls using traditional mud adobe materials and vernacular techniques in conformance with National Parks Service Preservation Brief No. 5;
- 2.2.2.4 Will preserve, refinish and weather-strip the double-hung sash windows in conformance with National Parks Service Preservation Brief No. 9 for Repair of Historic Wooden Windows. If feasible, add interior storm windows;
- 2.2.2.5 Will construct an elevator to access all three floors of the building;
- 2.2.2.6 Will renovate the interior of the building to include:
 - 2.2.2.6.1. Eight (8) apartments with one-bedroom, one bath, kitchen and living area, approximately 700 square feet;
 - 2.2.2.6.2. Ground floor community amenities: community room with full kitchen, classroom, rest rooms and janitorial room.
- 2.2.2.7 Provide ten (10) open-air dedicated parking spaces for tenants.

2.3 Design and Construction. Partnership will:

- 2.3.1 Obtain any approvals, permissions and permits necessary for the completion of the Project.
- 2.3.2 Comply with all applicable federal, state, county and local laws, ordinances, regulations, building standards and codes, including Pima County Building Code (Title 15, Chapter 15.04) and the Pima County Inclusive Design Ordinance 2002-72 – Pima County local amendment to the 1998 American National Standard Accessible and Usable Buildings and Facilities Code (ANSI 117.1).
- 2.3.3 Ensure that the buildings and all units meet Universal Design Standards to exceed ADA standards.
- 2.3.4 Follow the energy requirements set forth in Arizona's 2016 Qualified Allocation Plan.
- 2.3.5 Comply with the applicable provisions of Title 34, Arizona Revised Statutes. Failure to follow Title 34 for construction activities will be considered a default and Partnership will immediately repay to County any and all sums provided to Partnership pursuant to this Contract.
- 2.3.6 Administer all construction contracts for the Project in accordance with all legal requirements, and A.R.S. § 35-460 if applicable, and in accordance with the Construction Schedule, as follows:
 - 2.3.6.1 Construction Schedule. Partnership will:
 - 2.3.6.1.1. Prepare a construction schedule showing the anticipated timing and duration of each stage of construction ("Construction Schedule");
 - 2.3.6.1.2. Provide a Preliminary Construction Schedule to County no less than thirty (30) days after execution of this Contract;
 - 2.3.6.1.3. Provide a final Construction Schedule within thirty (30) days after award of the construction contract(s) by Developer.
 - 2.3.6.1.4. If the Project cannot be completed as set forth in the Construction Schedule, notify County and provide a revised Construction Schedule which is agreeable to County.
 - 2.3.6.2 Change orders. Partnership must consult with County on any proposed change order requests and will obtain prior written approval from County on all such

requests prior to making any commitments for the expenditure of County bond proceeds on such changes.

2.3.6.3 **Construction Documentation.** Upon request of County's Project Manager, Partnership will provide title reports, appraisal reports, construction contracts and other documents or information reasonable related to the work performed under this Contract.

2.3.6.4 **Legal Claims.** Partnership will afford County the opportunity to review and comment on all legal claims prior to resolution thereof.

2.4 **County Recognition.** Partnership will:

2.4.1 Acknowledge County's contribution to the Project in a form approved by County. Acceptable forms of recognition may include, but are not limited to: signs, permanent plaques, press releases and recognition at opening ceremonies.

2.4.2 Erect signs provided by County at the construction site. The signs will:

2.4.2.1 Be placed at locations agreed upon by the Parties;

2.4.2.2 Identify "Pima County Bond Funds" as a source of funding for the Project; and

2.4.2.3 Be returned to County after completion of construction and, if applicable, the dedication of the Project.

2.5 **Project Manager and Representatives.**

2.5.1 Partnership will:

2.5.1.1 Provide construction management of and supervise all aspects of the Project and ensure that:

2.5.1.1.1. Construction work meets all standards and specifications set forth herein;

2.5.1.1.2. Construction site is secured to prevent breaking and entering, vandalism or other damage; and

2.5.1.1.3. Construction site and grounds are kept free of trash and construction debris.

2.5.1.2 Assign a qualified Project Manager to coordinate with County's liaison throughout construction and lease-up.

2.5.2 County will designate a staff member to act as the County Liaison to the Project Manager during construction of the Project.

2.6 Partnership **warranties.** Partnership warrants that:

2.6.1 It has the financial resources necessary to pay all costs in advance of requesting reimbursement from County.

2.6.2 It has disclosed all identities and all sources of financing and subsidies, including, but not limited to, construction, bridge and permanent loans.

2.6.3 Financing for the Project has been obtained as set forth in Exhibit B.

2.7 **Affordability.** The purpose of the Project is to provide safe, sustainable and affordable rental housing for low-income seniors. County has determined that the provision of such housing will be a substantial benefit to the public. In order to realize the public benefits, the parties acknowledge that continuing, rather than merely initial, affordability is required.

- 2.7.1 **Affordability.** Unless a funding source requires a different household composition and income eligibility, all 83 units in the Project will be leased to qualified households. A “qualified household” is a household with:
- 2.7.1.1 A household income at or below 80% Area Median Income (“AMI”) as defined by the U.S. Department of Housing and Urban Development at the time of initial occupancy; and
 - 2.7.1.2 At least one member of the household is age 62 or older.
- 2.7.2 **Pima County Affordability Period.** At least thirty-eight (38) of the apartments at *Site I* and five (5) of the apartments at *Site II* will be maintained and rented to qualified households for no less than thirty (30) years from the date that all of the following have occurred:
- 2.7.2.1 The Project is completed;
 - 2.7.2.2 All 83 apartments have received the final certificate of occupancy from the City of Tucson; and
 - 2.7.2.3 At least thirty-eight (38) of the 75 apartments at *Site I* and five (5) of the apartments at *Site II* have been leased to qualified households.
- 2.7.3 **Affordability Restriction.** Notwithstanding any affordability periods and restrictions imposed by other funding sources for the Project, the Pima County Affordability Period will be secured through a regulatory agreement against *Site I* of the Project and in favor of Pima County in the form set forth in Exhibit C. **This Performance Deed of Trust must be executed and recorded in the Office of the Pima County Recorder prior to any payments being made under Section 3.0 of this Contract.** The Affordability Restriction will:
- 2.7.3.1 Give County a security interest in *Site I* in an amount equal to the amount of funds contributed by County under this Contract; and
 - 2.7.3.2 Be superior to all monetary liens and encumbrances, except as specifically set forth in Exhibit C.
- 2.7.4 **This Section 2.7 will survive the termination, cancellation, expiration or revocation of this Contract, whether in whole or in part, and will remain in effect for the Affordability Period.**

2.8 **Operations and Management.** Partnership will:

- 2.8.1 Begin marketing the Project at least 90 days before construction is completed.
- 2.8.2 Employ suitably trained and skilled personnel to perform all services under this Contract.
- 2.8.3 Throughout the initial lease-up and the Pima County Affordability Period, advertise available units on Pima County’s Housing Search website:
www.pimacountyhousingsearch.org.
- 2.8.4 Determine the income eligibility of each tenant prior to executing a lease.
- 2.8.5 Retain documentation of tenant eligibility.
- 2.8.6 Collect rents.
- 2.8.7 Ensure that any vacant unit is secured and protected from vandalism.
- 2.8.8 Establish and maintain a property maintenance schedule to ensure that all units and community amenities comply with ADA standards and applicable state, county and local standards at all times.

- 2.8.9 Maintain and repair the properties, 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.
- 2.8.10 Arrange for the on-site provision of support services to residents of the Project including, but not limited to, those designated in the Partnership's Project Narrative and in the Bond Funding Application submitted to Pima County on February 26, 2016, and revised on October 25, 2016 and incorporated herein by reference.

2.9 Monitoring and Evaluation

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

3.0 FINANCE AND PAYMENT

- 3.1 County will allocate up to \$604,989.00 of 2004 General Obligation Bond sale proceeds ("the Maximum Allocated Amount") for costs of the Project. County will reimburse Partnership for the actual costs incurred by Partnership for demolition and vertical construction of the structures and activities of the Project up to, but not in excess of, the Maximum Allocated Amount.
- 3.2 **No payment will be made by County until the following requirements have been met:**
 - 3.2.1 Execution of Lien. The Affordability Restriction described in paragraph 2.7.3 has been executed and recorded in the Office of the Pima County Recorder;
 - 3.2.2 Lease for Site II. Partnership provides a copy of the Marist Lease that meets the conditions set forth in paragraph 2.2.2.1.
 - 3.2.3 Reimbursement Schedule. Within thirty (30) days after execution of this Contract, Partnership has submitted to County a Reimbursement Schedule showing the anticipated dates and amounts of payment requests from Partnership for reimbursement of Project expenses and a reasonable detailed Project Budget; and
 - 3.2.4 Proof of Insurance. Partnership has furnished County proof that Partnership has in place all the insurance policies required by Section 5.0 below, except that Partnership or its general contractor will not be required to obtain Builder's Risk Insurance until vertical construction begins.

- 3.2.5 **Title Policy.** Partnership will assure issuance of a lender's policy of title insurance insuring the County's lien is valid and superior to all monetary liens and encumbrances on the Property other than the Construction Deed of Trust and the deed of trust securing the Project's permanent financing, as more fully described on Exhibit B to the Performance Deed of Trust, and subject only to such nonmonetary encumbrances as are reasonably acceptable to County. Partnership will pay for the cost of County's lender's policy of title insurance.
- 3.3 County bond proceeds must be used only for the reasonable costs of the vertical construction of the structures in the Project ("the eligible expenses").
- 3.4 None of the Maximum Allocated Amount may be spent for management or administrative costs of the Project.
- 3.5 **Reporting and Payment Responsibilities.**
- 3.5.1 **Reimbursement Schedule.**
- 3.5.1.1 Partnership will:
- 3.5.1.1.1. Within thirty (30) days after the execution of this Contract, submit to County a schedule ("the Reimbursement Schedule") showing the anticipated dates and amounts of requests from Partnership for reimbursement of expenses incurred and paid by Partnership ("Reimbursement Requests").
- 3.5.1.1.2. Within thirty (30) days of award of the last construction contract by Partnership, Partnership will provide County with a Final Reimbursement Schedule.
- 3.5.1.2 The Final Reimbursement Schedule may be combined with the Final Construction Schedule described in paragraph 2.3.7.1.3.
- 3.5.2 **Reimbursement Requests.** Partnership will:
- 3.5.2.1 Within ten (10) days of the end of each month, starting on the date indicated in the Reimbursement Schedule, submit to County a Reimbursement Request for the previous month's expenses. Each Reimbursement Request must:
- 3.5.2.1.1. Reference this contract number.
- 3.5.2.1.2. Be approved and signed by an authorized representative of Partnership as true and accurate.
- 3.5.2.1.3. Be accompanied by supporting documentation which must include, but is not limited to:
- 3.5.2.1.3.1. A summary report of monthly expenditures;
- 3.5.2.1.3.2. Copies of invoices submitted by contractors and paid by Partnership since the last Reimbursement Request; and
- 3.5.2.1.3.3. A certification that the invoices have been paid by Partnership (less any retention held by Partnership).
- 3.5.2.1.4. Be consistent with the Reimbursement Schedule.
- 3.5.2.1.5. Include a monthly progress report as set forth in paragraph 3.5.6 below.
- 3.5.2.2 Be responsible for verifying the accuracy of all invoices submitted by contractors.

3.5.2.3 Submit each Reimbursement Request to:

Community Development & Neighborhood Conservation Department
Attn: Affordable Housing Project Coordinator
c/o Pima County Housing Center
801 W. Congress Street
Tucson, AZ 85745

3.5.3 Payment. County will review each monthly Reimbursement Request and:

3.5.3.1 If approved, pay Partnership within thirty (30) days after receipt of the Reimbursement Request (except for the final accounting and payment as set forth in paragraph 3.5.9 below); or

3.5.3.2 If not approved, notify Partnership of the reason for the disapproval (either orally or in writing) within fifteen (15) days after receipt of the Reimbursement Request. If the County does not object to the Reimbursement Request, it will pay the amount requested within thirty (30) days after receipt of the Reimbursement Request.

3.5.4 Withholding of Reimbursement. Notwithstanding any other provision herein, no reimbursement will be made for any Reimbursement Request until County is satisfied that the work for which the Reimbursement Request was submitted has been done satisfactorily, the general contractors and subcontractors have been paid (less any retention held by Partnership), and the amounts requested have been verified and are for eligible expenses. Failure to pay the general contractor or any subcontractors for work contracted and performed may, in County's sole discretion, result in withholding of future reimbursements from the Partnership and direct payment by County to the unpaid general contractor or subcontractor.

3.5.5 Temporary Payment Suspension. County may suspend payments under this Contract immediately for violation of contractual requirements, unsafe working conditions, violation of Federal or State law, or lack of reasonable progress on the Project. In the event of such suspension, Partnership will assist County by providing information and documents to evaluate the status of the Project and to determine whether payments should be resumed or this Contract terminated.

3.5.6 Monthly Progress Reports.

3.5.6.1 Within ten (10) days of the end of each month, Partnership will submit, a Monthly Progress Report, in the format attached as Exhibit D.

3.5.6.2 **A Monthly Project Report must be submitted even if no reimbursement is being sought for the preceding month.**

3.5.6.3 Reports will be submitted to the person and address set forth in paragraph 3.5.2.3.

3.5.7 Delays.

3.5.7.1 Partnership will promptly notify County as soon as it becomes aware of a potential Project delay that may cause a deviation from the Construction Schedule and/or the Reimbursement Schedule.

3.5.7.2 In the event of a deviation from the Reimbursement Schedule, County and Partnership will establish a new Reimbursement Schedule which will be consistent with all applicable Federal Treasury Regulations.

3.5.8 Final Payment. Ten-percent (10%) of the Allocated Maximum Amount (\$60,498.00) will be retained by County and withheld from the final payment to Partnership until the occurrence of the following events:

3.5.8.1 Five-percent (5%) of the Allocated Maximum Amount (\$30,249.00) will be disbursed to Partnership upon receipt of the Certificates of Occupancy for all 83 units at both *Site I* and *Site II*.

3.5.8.2 Five- percent (5%) of the Allocated Maximum Amount (\$30,249.00) will be disbursed upon receipt of both:

3.5.8.2.1. The Final Report and Final Accounting Statement described in paragraph 3.5.9 below; and

3.5.8.2.2. The number of units set forth in paragraph 2.7.2.3 are occupied by qualified households.

3.5.9 Final Reporting and Accounting.

3.5.9.1 Within ninety (90) days after completion of Project and issuance of a Certificate of Occupancy for all units in the Project, Partnership will submit to County a final report in a format determined by County. The Final Report will include, but may not be limited to:

3.5.9.1.1. Description of the Project as constructed and summary of the Project history (i.e. Project designer(s), engineer(s) and construction contractor(s); artist(s) responsible for the public art, if any, included in the Project; other funding sources; description of public participation; purpose and public benefit to be realized from the Project; other pertinent information);

3.5.9.1.2. Photographs;

3.5.9.1.3. Final as-built drawings;

3.5.9.1.4. Reports or forms required by all other funding sources verifying the Project is completed;

3.5.9.1.5. Certificates of Occupancy for both *Site I* and *Site II*;

3.5.9.1.6. Evidence that the number of units set forth in paragraph 2.7.2 are leased and occupied by a qualified household; and

3.5.9.1.7. Evidence that the Project is being actively managed by Partnership or its designated property manager.

3.5.9.2 At the same time Partnership submits the Final Report, Partnership will submit to County a detailed Final Accounting Statement of the funds expended on the Project and, if necessary, a final Reimbursement Request.

3.5.9.3 Failure to timely provide the Final Report and Final Accounting Statement may result in forfeiture of the retention amount still held by County and denial of the final reimbursement.

3.5.9.4 County will review the Final Accounting Statement and:

3.5.9.4.1. If approved, pay Partnership the amount set forth in the Final Reimbursement Request, if any, within forty-five (45) days after receipt of the Final Accounting Statement; or

- 3.5.9.4.2. If not approved, notify Partnership of the reason for the disapproval within fifteen (15) days after receipt of the Final Accounting Statement.

4.0 BOND FUNDING REQUIREMENTS

- 4.1 **Compliance.** Partnership agrees to comply with all applicable provisions of Pima County Code Chapter 3.06 – *Bonding Disclosure, Accountability, and Implementation* and the Bond Ordinance, as they now exist or may hereafter be amended.
- 4.2 **Reports.** Any reports to be submitted by Partnership to County in compliance with Pima County Code Chapter 3.06 or the Bond Ordinance must be provided in a format and schedule determined by County.

4.3 Amendment to the Bond Ordinance.

- 4.3.1 Partnership will notify County of any event that would require an amendment of the Bond Ordinance and will formally request that the Pima County Board of Supervisors hold a public hearing on the requested amendment.
- 4.3.2 County and Partnership will follow the procedures for amendment of the Bond Ordinance set forth in Pima County Code Chapter 3.06, as it may be amended or renumbered from time to time, and the relevant sections of the Bond Ordinance.
- 4.3.3 In the event that the Board of Supervisors does not approve Partnership's request for a Bond Ordinance amendment, Partnership will complete the Project as defined by the Bond Ordinance and this Contract.

4.4 Federal Treasury Regulations.

- 4.4.1 Partnership acknowledges that:

- 4.4.1.1 County manages the expenditures of bond proceeds in order to qualify for a spending exception to the arbitrage rebate requirements of Sections 148 through 150 of the Internal Revenue Code of 1986 and the related regulations found in 26 CFR Part 1, §§1.148 through 1.150 as may be modified from time to time ("the Tax Exempt Bond Rules").
- 4.4.1.2 Arbitrage rebate is affected by both the use of bond proceeds and the timing of bond-related expenditures.

- 4.4.2 Notwithstanding any other provision of this Contract, County may, in its sole discretion, either reallocate funds for the Project to other county bond-funded projects (which may, in some circumstances, result in a delay in payments under this Contract) or terminate this Contract as set forth in Section 7.0 below, if County determines that reallocation or termination is necessary or advantageous to County under the Tax Exempt Bond Rules in order to:

- 4.4.2.1 Qualify for a spending exception to the arbitrage rebate requirements; or
- 4.4.2.2 Reduce the amount of any potential arbitrage rebate or penalty; or
- 4.4.2.3 Manage County's Bond proceeds.

5.0 INSURANCE

- 5.1 Partnership will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Partnership's indemnity obligations under this Contract. The County in no way

warrants that the required insurance is sufficient to protect the Partnership for liabilities that may arise from or relate to this Contract. If necessary, Partnership may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

5.2 Insurance Coverages and Limits:

- 5.2.1 **Commercial General Liability (CGL):** Occurrence Form covering liability arising from premises, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations with minimum limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate.
- 5.2.2 **Business Automobile Liability:** Coverage for any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$1,000,000 Each Accident.
- 5.2.3 **Workers' Compensation (WC) and Employers' Liability:**
 - 5.2.3.1 Workers' Compensation with Employers Liability limits of \$1,000,000 each accident and \$1,000,000 each employee – disease. Workers' Compensation statutory coverage is compulsory for employers of one or more employees.
 - 5.2.3.2 Note: The Workers' Compensation requirement does not apply if Partnership is exempt under A.R.S. § 23-901, and has executed the appropriate Pima County Sole Proprietor (Independent Contractor) Waiver form.

5.3 Additional Coverage Requirements:

- 5.3.1 **Insurer Financial Ratings:** Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A- VII, unless otherwise approved by the County.
- 5.3.2 **Additional Insured:** The General Liability policy must be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Partnership. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.
- 5.3.3 **Waiver of Subrogation:** Commercial General Liability and Workers' Compensation coverages must each contain a waiver of subrogation in favor of County and its Agents for losses arising from work performed by or on behalf of the Partnership.
- 5.3.4 **Primary Insurance:** The Required Insurance policies, with respect to any claims related to this Contract, must be primary and must treat any insurance carried by County as excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Partnership's deductible or Self Insurance Retention (SIR).
- 5.3.5 **Subcontractors:** Partnership must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Partnership must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Partnership must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

5.3.6 **Builder's Risk Insurance.** When construction work begins, Partnership shall obtain Builder's Risk Insurance in an amount equal to the outstanding amount of the contractual obligations entered into for the Project, with coverage written on an all risk, replacement cost basis and including coverage for soft costs, flood and earth movement. Partnership must maintain Builder's Risk Insurance until final payment has been made from all sources.

5.3.7 **Performance Bond.** Partnership will provide a Performance Bond for not less than one hundred percent (100%) of the Maximum Allocated Amount, or another method or assurance, approved by Pima County Board of Supervisors, that the Project will be completed.

5.4 Verification of Coverage:

5.4.1 Insurer or Broker of Partnership must evidence compliance with the Insurance Requirements by furnishing certificates of insurance executed by a duly authorized representative of each insurer. Each certificate must include:

5.4.1.1 The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate,

5.4.1.2 A notation of policy deductibles or SIRs relating to the specific policy, and

5.4.1.3 Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its agents.

5.4.2 Each Required Insurance policy and appropriate endorsements must be in effect not less than 15 days prior to commencement of work under this Contract. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the Required Insurance, or to provide evidence of renewal, is a material breach of this Contract.

5.4.3 County reserves the right to, at any time, require complete copies of any or all Required Insurance policies.

5.4.4 **Cancellation Notice:** Partnership's insurance policies and endorsements shall not be permitted to expire, be cancelled, suspended or materially changed from the agreed upon Insurance Requirements for any reason without thirty (30) days advance written notice to the County of the policy cancellation, suspension or material change. Partnership must provide written notice to County within 2 business days of receipt of notice. For cancellation of non-payment, Insurer is to provide County with written notice 10 days prior to cancellation of policy.

5.5 **Approval and Modifications:** The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Partnership, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

6.0 INDEMNIFICATION

6.1 Partnership 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 Partnership, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract and the Project.

- 6.2 **Preexisting Conditions.** To the fullest extent permitted by law, Partnership will indemnify, defend and hold County, its boards, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by Partnership prior to the execution of this Contract.
- 6.3 **Notice of Claim.** Each party will notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section 6.0. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section 6.0.
- 6.4 Developer warrants that services provided under this Contract are non-infringing. Developer will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this Contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.
- 6.5 **This Section 6.0 will survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.**

7.0 TERMINATION

- 7.1 **Termination for Convenience:** County reserves the right to terminate this Contract 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.
- 7.2 **Termination for Cause:** This Contract may be terminated at any time without advance notice and without further obligation by the County when the Partnership is in default of any provision of this Contract beyond any applicable notice and cure periods provided herein or in the Performance Deed of Trust.
- 7.3 **Default.** If Partnership at any time defaults in the performance of any of Partnership's obligations under this Contract, County may suspend payments to Partnership as set forth in paragraph 3.5.5 above until such time as the default is cured. In addition, County may terminate this Contract if any default is not cured within sixty (60) days of Partnership's receipt of a written notice from County stating the nature of the default.
- 7.4 **Non-Appropriation:** Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Developer, other than for services rendered prior to termination.
- 7.5 **Suspension:** County reserves the right to suspend Developer's performance and payments under this Contract immediately upon notice delivered to Developer's designated agent in order to investigate Developer's activities and compliance with this Contract. 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.

- 7.6 Arbitrage Rebate Requirements. The County reserves the right to cease payments to Developer and unilaterally terminate this Contract if the County determines, in County's sole discretion, that any action or inaction on the part of Developer is likely to occur that would adversely affect the election made by the County under the Tax Exempt Bond Rules relating to exceptions for arbitrage rebate.
- 7.7 Effect of Termination. Any termination of this Contract will not relieve any Party from liability or costs already incurred under this Contract.

8.0 CANCELLATION FOR CONFLICT OF INTEREST

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

9.0 BOOKS, RECORDS AND INSPECTIONS

- 9.1 Books and Records. Partnership must keep and maintain proper and complete books, records and accounts of the Project. For bond purposes, the Project books and records must continue to be maintained for a period of three (3) years after final payment of the bonds issued for the Project. The bonds funding the Project are expected to be fully paid by June 30, 2032, but may be subject to re-funding.
- 9.2 Inspection and Audit. The books, records and accounts of the Project must be available for inspection and audit by duly authorized representatives of County at all reasonable times during the period in which said books, records and accounts must be maintained by the Partnership.
- 9.3 Indemnification. Partnership must indemnify and hold the County harmless from and against any amount required to be paid to the Internal Revenue Service or any governmental agency arising out of the failure by Partnership to maintain such records.

10.0 COMPLIANCE WITH LAWS

- 10.1 Partnership and County will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract.
- 10.2 The laws and regulations of the State of Arizona will govern the rights of the Parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract must be brought in a court of the State of Arizona in Pima County.
- 10.3 Any changes in the governing laws, rules, and regulations during the terms of this Contract will apply, but do not require an amendment.

11.0 INDEPENDENT CONTRACTOR

The status of Partnership will be that of an independent contractor. Neither Partnership nor Partnership'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. Partnership will be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and will indemnify and hold County harmless from any and all liability which County may incur because of Partnership's failure to pay such taxes. Partnership will be solely responsible for its program development, operation, and performance.

12.0 SUBCONTRACTORS

- 12.1 Except as provided in paragraph 12.2, Partnership will not enter into any subcontracts for any services to be performed under this Contract without County's prior written approval of the

subcontract. Partnership must follow all applicable Federal, State, and County rules and regulations for obtaining subcontractor services.

- 12.2 Prior written approval is not required for the purchase of supplies that are necessary and incidental to Partnership's performance under this Contract.
- 12.3 Partnership 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 Partnership 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.
- 12.4 Partnership must include the provision set forth in paragraph 21.4 in all contracts between Partnership and its subcontractors providing goods or services pursuant to this Contract. Partnership 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.

13.0 AUTHORITY TO CONTRACT

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

14.0 NOTICE

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

County:

C.H. Huckelberry, County Administrator
130 W. Congress, 10th Floor
Tucson, AZ 85701

Robin Brigode, Clerk of the Board
130 W. Congress, 5th Floor
Tucson, AZ 85701

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

Partnership:

FSL Padre Kino Village, LP
ATTN: Stephen Hastings
1201 E. Thomas Road
Phoenix, AZ 85014

15.0 ASSIGNMENT

Partnership will not assign its rights to this Contract 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.

16.0 NON-DISCRIMINATION

- 16.1 Partnership 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.

- 16.2 During the performance of this Contract, Partnership 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.

17.0 AMERICANS WITH DISABILITIES ACT

Partnership 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 Partnership is carrying out a government program or services on behalf of County, then Partnership 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 Contract.

18.0 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 Contract 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.

19.0 OTHER DOCUMENTS

- 19.1 In entering into this Contract, Partnership and County have relied upon information provided in Partnership's proposal submitted February 26, 2016 and revised October 25, 2016 including the Instructions to Bidders, Standard Terms and Conditions, Specific Terms and Conditions, Solicitation Addenda, Partnership's Proposal, other information and documents submitted by the Partnership 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 Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract, including all exhibits. Partnership will promptly bring any provisions which Partnership believes are inconsistent to County's attention, and County will provide Partnership with its interpretation of the provisions in question.

20.0 PUBLIC INFORMATION

- 20.1 Pursuant to Arizona Public Records law, A.R.S. § 39-121 *et seq.*, documents submitted by Partnership 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.
- 20.2 In the event that County receives a public records request pursuant to A.R.S. § 39-121 *et seq.* for documents Partnership submitted to County, County will notify Partnership on the same day the request is made or as soon as possible thereafter.
- 20.3 County will release Partnership's records ten (10) business days after the date of notice to the Partnership, unless Partnership 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.
- 20.4 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 Partnership nor will County be in any way financially responsible for any costs associated with securing such an order.

21.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE

- 21.1 Partnership hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Partnership's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Partnership will further ensure that each subcontractor who performs any work for Partnership under this contract likewise complies with the State and Federal Immigration Laws.
- 21.2 County will have the right at any time to inspect the books and records of Partnership and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 21.3 Any breach of Partnership'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 Contract subjecting Partnership to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Partnership 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 Enterprise preferences apply) as soon as possible so as not to delay project completion.
- 21.4 Partnership will advise each subcontractor of County's rights, and the Subcontractor's obligations, under this Section 21.0 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."

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

22.0 REMEDIES

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

23.0 NO THIRD PARTY BENEFICIARIES

Nothing in the provisions of this Contract is intended to create duties or obligations to or rights in third parties not parties to this Contract or effect the legal liability of either party to the Contract by imposing any standard of care different from the standard of care imposed by law.

24.0 ISRAEL BOYCOTT CERTIFICATION

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

25.0 SEVERABILITY

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

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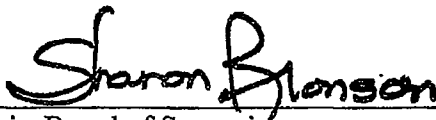
26.0 ENTIRE AGREEMENT

- 26.1 This document constitutes the entire agreement between the Parties pertaining to the subject matter hereof.
- 26.2 No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Contract will affect or modify any of the terms or obligations contained in any documents comprising this Contract. 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.
- 26.3 This Contract may be modified, amended, altered or extended only by a written amendment signed by the Parties.

THIS CONTRACT MAY BE SIGNED IN COUNTERPARTS.

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

PIMA COUNTY:

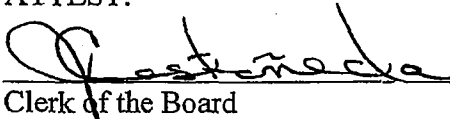


Chair, Board of Supervisors

JAN 17 2017

Date

ATTEST:

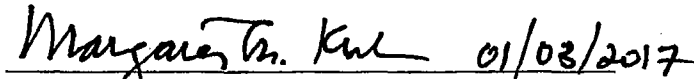


Clerk of the Board

JAN 17 2017

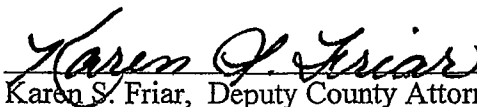
Date

APPROVED AS TO CONTENT:



Margaret M. Kish, Director
Community Development & Neighborhood
Conservation Department

APPROVED AS TO FORM:



Karen S. Friar, Deputy County Attorney

PARTNERSHIP:

FSL Padre Kino Village, LP, an Arizona
limited partnership

By: FSL Padre Kino, LLC, an Arizona limited
liability company

Its: General Partner

By: FSL Real Estate Services, an Arizona
nonprofit corporation

Its: Sole Member

By:

Tom Egan, President

Date

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THIS CONTRACT MAY BE SIGNED IN COUNTERPARTS.

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

PIMA COUNTY:

Chair, Board of Supervisors

Date

ATTEST:

Clerk of the Board

Date

APPROVED AS TO CONTENT:

Margaret Kish 01/03/2017
Margaret Kish, Director
Community Development & Neighborhood
Conservation Department

APPROVED AS TO FORM:

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

PARTNERSHIP:

**FSL Padre Kino Village, LP, an Arizona
limited partnership**

By: FSL Padre Kino, LLC, an Arizona limited
liability company
Its: General Partner

By: FSL Real Estate Services, an Arizona
nonprofit corporation
Its: Sole Member

By:

Tom Egan
Tom Egan, President

Jan 11, 2017
Date

**PIMA COUNTY COMMUNITY DEVELOPMENT &
NEIGHBORHOOD CONSERVATION DEPARTMENT**

PROJECT: THE MARIST ON CATHEDRAL SQUARE
SENIOR RENTAL HOUSING PROJECT

CONTRACT TERM: January 17, 2017 to December 31, 2018

FUNDING: 2004 Affordable Housing General Obligation
Bond Sale Proceeds

AMENDMENT NO: One (1)

CONTRACT

NO. CT-CD-17-190

AMENDMENT NO. 01

This number must appear on all
invoices, correspondence and
documents pertaining to this
contract.

Original Contract Term:	1/17/2017 – 12/31/2018	Original Contract Amount:	\$604,989.00
Termination Date prior amendments:	N/A	Amount prior amendments:	-0-
Termination Date this amendment:	N/A	Amount this amendment:	-0-
		Revised Contract Amount:	\$604,989.00

Pima County, a body politic and corporate of the State of Arizona ("County") and FSL Padre Kino Village, LP, an Arizona limited partnership ("Partnership"), have entered into the above referenced Contract for the construction of affordable rental housing in Tucson, Arizona.

RECITALS

- A. Under the terms and conditions of the above mentioned Contract, Partnership has acknowledged that it has obtained, or will obtain, financing from various sources sufficient to complete an 83-unit affordable housing project for seniors (age 62 and older) at 111 S. Church Avenue and the historic Marist College ("the Project").
- B. In connection with obtaining all funds necessary for the Project, Partnership will enter into a Building Loan Agreement with Wells Fargo Bank, National Association, a national banking association ("WFB"), in the approximate original principal amount of \$17,000,000.00 ("the WFB Loan"), and Wells Fargo Affordable Housing Community Development Corporation will become the "Investor Limited Partner" of Partnership.
- C. To ensure that Partnership can close on the WFB loan, requires that certain provisions of the Contract be amended.
- D. County has reviewed the amendments sought by WFB and finds them appropriate to ensure that the Project is completed to benefit the residents of Pima County.

NOW, THEREFORE, County and Partnership agree to amend the Contract as follows:

1. Section 2.0 – SCOPE OF SERVICES is amended as follows:

1.1. Section 2.2 – Project, is amended as follows:

- 1.1.1. **Paragraph 2.2.1.2.4** is amended to decrease the number of reserved parking spaces to 27 and add the following to the beginning of the sentence:

Notwithstanding the representation made in the Project Narrative set forth in Exhibit B,

1.1.2. **Paragraph 2.2.1.3** is added to read:

2.2.1.3 Exhibit B is updated to reflect the following:

2.2.1.3.1 If awarded, an Affordable Housing Program ("AHP") Loan from Wells Fargo Financial National Bank, as an AHP Member Bank, may replace the Rio Nuevo District Loan in the amount of \$1,000,000.00; and

2.2.1.3.2 The amount of the deferred developer fee on Form 3 is decreased to \$801,806.00.

1.2. **Section 2.3 – Design and Construction, Paragraph 2.3.6.1.4** is amended to delete "which is agreeable to County" at the end of the sentence.

1.3. **Section 2.5 – Project Manager and Representatives** is amended as follows:

1.3.1. The heading is changed to read: **Project Manager and Representations.**

1.3.2. **Paragraph 2.6.3** is amended to read:

Financing for the Project has been, or will be, obtained as set forth in **Exhibit B.**

2. Section 3.0 - FINANCE AND PAYMENT,

2.1. **Paragraph 3.1**, the first sentence is amended to read:

County has allocated up to **\$604,989.00** of 2004 General Obligation Bond sale proceeds ("the Maximum Allocated Amount") for costs of the Project.

2.2. **Paragraph 3.5.5 – Temporary Payment Suspension** is amended to change the first sentence:

FROM: County may suspend payments under this Contract immediately for violation of contractual requirements, unsafe working conditions, violation of Federal or State law, or lack of reasonable progress on the Project.

TO: County may suspend payments under this Contract immediately for violation of contractual requirements, unsafe working conditions, violation of Federal or State law or for work stoppages exceeding sixty (60) consecutive days.

3. Section 7.0 – TERMINATION is amended as follows:

3.1. **Paragraph 7.1 – Termination for Convenience** is deleted in its entirety. The remaining paragraphs are renumbered to conform.

3.2. **Former Paragraph 7.3 (now 7.2) – Default** is deleted in its entirety and replaced with the following:

If Partnership at any time defaults in the performance of any of Partnership's obligations under this Contract, County may suspend payments to Partnership as set forth in paragraph 3.5.5 above until such time as the default is cured. Wells Fargo Affordable Housing Community Development Corporation ("Investor Limited Partner" will have the right, but not the obligation, to cure any default of Partnership under this Contract, and such cure will be deemed to have been made by Partnership. In addition, County may terminate this Contract if any default is not cured within sixty (60) days of Partnership's receipt of written notice from County stating the nature of the default. Partnership will cooperate fully with, and timely provide all requested information and documentation for, any County investigation of Partnership's activities under and compliance with this Contract.

3.3. **Former Paragraph 7.5 – Suspension** is deleted in its entirety.

4. **SECTION 14.0 – NOTICE** is amended to require notice also be provided to:

Wells Fargo Affordable Housing Community Development Corporation
301 South College Street, MAC D1053-170
Charlotte, NC 28288
Attn: Director of Tax Credit Asset Management

5. **SECTION 23.0 – NO THIRD PARTY BENEFICIARIES** the text is deleted in its entirety and replaced with the following:

Except as set forth specifically herein, nothing in the provisions of this Contract is intended to create duties or obligations to or rights in third parties not parties to this Contract or effect the legal liability of either party to the Contract by imposing any standard of care different from the standard of care imposed by law. The following entity will be considered a third party beneficiary for the purpose of enforcing Partnership's performance under this Contract:

Wells Fargo Affordable Housing Community Development Corporation
Wells Fargo Bank, National Association

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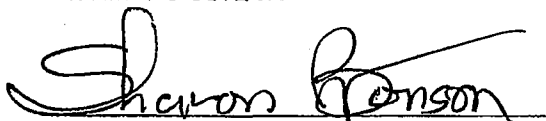
6. **EXHIBIT C – PERFORMANCE DEED OF TRUST** is deleted in its entirety and replaced with the Exhibit C – PERFORMANCE DEED OF TRUST attached to this Amendment.

All other provisions of the Agreement, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties. As of the date this amendment is executed by Pima County, Partnership is not in default of any provision of the Agreement.

THIS AMENDMENT NO. 1 MAY BE SIGNED IN COUNTERPARTS.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers.

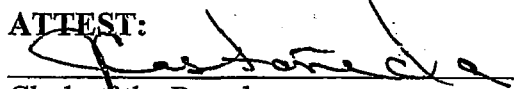
PIMA COUNTY:


Chair, Board of Supervisors

MAR 21 2017

Date

ATTEST:


Clerk of the Board

MAR 21 2017

Date

PARTNERSHIP:

FSL Padre Kino Village, LP, an Arizona
limited partnership

By: FSL Padre Kino, LLC, an Arizona limited
liability company

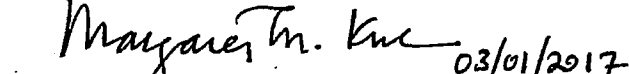
Its: Sole Member

By: FSL Real Estate Services, an Arizona
nonprofit corporation

Its: Sole Member

By: _____
Tom Egan, President

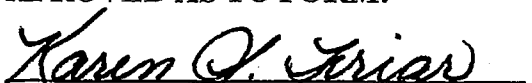
APPROVED AS TO CONTENT:


Director, Community Development and
Neighborhood Conservation Department

Date

Date

APROVED AS TO FORM:


Karen S. Friar, Deputy County Attorney

6. **EXHIBIT C – PERFORMANCE DEED OF TRUST** is deleted in its entirety and replaced with the Exhibit C – PERFORMANCE DEED OF TRUST attached to this Amendment.

All other provisions of the Agreement, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties. As of the date this amendment is executed by Pima County, Partnership is not in default of any provision of the Agreement.

THIS AMENDMENT NO. 1 MAY BE SIGNED IN COUNTERPARTS.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers.

PIMA COUNTY:

Chair, Board of Supervisors

Date

ATTEST:

Clerk of the Board

Date

APPROVED AS TO CONTENT:

Director, Community Development and
Neighborhood Conservation Department

Date

APPROVED AS TO FORM:

Karen S. Friar, Deputy County Attorney

PARTNERSHIP:

FSL Padre Kino Village, LP, an Arizona
limited partnership

By: FSL Padre Kino, LLC, an Arizona limited
liability company

Its: Sole Member

By: FSL Real Estate Services, an Arizona
nonprofit corporation

Its: Sole Member

By: Tom Egan
Tom Egan, President

3/2/17
Date

END OF EXHIBIT B

EXHIBIT C

PERMITTED LIENS

1. Deed of Trust to Wells Fargo Bank, National Association, as beneficiary, to secure repayment of a construction loan to Trustor in the approximate original principal amount of \$17,250,000.
2. Deed of Trust to Rocky Mountain Community Reinvestment Corporatino, a Utah nonprofit corporation, as beneficiary, to secure repayment of permanent mortgage financing.
3. Either a Deed of Trust to Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona, as beneficiary, in the original principal amount of \$1,000,000 or a Deed of Trust to Wells Fargo Financial Bank, a member bank of the Federal Home Loan Bank of San Francisco, as beneficiary, in connection with a loan of Affordable Housing Program ("AHP") funds in an amount not to exceed \$1,750,000, together with any AHP Deed Restrictions.
4. Declaration of Affirmative Land Use and Restrictive Covenants executed by Trustor and the Arizona Department of Housing in connection with the low income housing tax credits.

END OF EXHIBIT C