



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: October 6, 2020

*** = Mandatory, information must be provided**

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

Habitat for Humanity Tucson, Inc.

***Project Title/Description:**

Carter Court HOME Down-Payment Assistance Project

The contract can be found in OnBase by searching Contracts CT-CR-21*116 in Doc_ID_AMS.

***Purpose:**

Provide direct down-payment assistance (DPA) to eleven qualified, low-income homebuyers of newly constructed, single family housing units built by Habitat for Humanity Tucson.

Attachment: Contract Number CT-CR-21-116

***Procurement Method:**

This Subrecipient contract is a non-procurement contract and not subject to procurement rules.

***Program Goals/Predicted Outcomes:**

Support affordable homeownership for eleven low-income households by providing each with up to \$25,000 in downpayment assistance (DPA).

***Public Benefit:**

Expand homeownership opportunities for those who otherwise may not afford to own a home; partner with an agency dedicated to helping families obtain stability and independence.

***Metrics Available to Measure Performance:**

Prior to close of escrow, county staff will review and approve homebuyer income certifications, Homebuyer Assistance Agreement explaining the conditions for DPA (must maintain housing as principal place of residence for 10 years). After closing, Habitat will record a county lien on each home to secure repayment of HOME funds in the event of a sale, default or other change of ownership. Habitat will also submit a HUD Completion Report for each home.

***Retroactive:**

This is not a retroactive contract.

Contract / Award Information

Document Type: CT Department Code: CR Contract Number (i.e., 15-123): 21*116
Commencement Date: 10/06/2020 Termination Date: 10/05/2021 Prior Contract Number (Synergen/CMS): _____
☒ **Expense Amount: \$*** \$275,000.00 ☐ **Revenue Amount: \$** _____

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

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☒ Yes ☐ No

If Yes, is the Contract to a vendor or subrecipient? Subrecipient

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Commencement Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____
☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____

Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

***Funding Source(s) required:**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
Commencement Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required:**

***Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Match funding from other sources?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Funding Source:** _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?** _____

Contact: Martha Martin/Ana Durazo

Department: Community and Workforce Development Telephone: 724-2463/4-2696

Department Director Signature/Date: Ol. Hurl for Daniel Tyutki ghs/2020

Deputy County Administrator Signature/Date: [Signature] 18 Sep 2020

County Administrator Signature/Date: C. R. [Signature] 9/17/2020
(Required for Board Agenda/Addendum Items)

Pima County Community and Workforce Development Department**PROJECT:** Carter Court HOME Down-Payment Assistance Project**DEVELOPER:** Habitat for Humanity Tucson, Inc.
3501 N. Mountain Avenue
Tucson, AZ 85719**AWARD AMOUNT:** \$275,000.00**PIMA COUNTY CONTRACT NO.:** CT-CR-21*116**FEDERAL FUNDING SOURCE:** U.S. Department of Housing and Urban Development
(HUD) – HOME Investment Partnerships Program
("HOME Program")**CONTRACT TERM:** October 6, 2020 through October 5, 2021**DUNS No.:** 148805864**Research or Development:** ☐ Yes ☒ No**Required Match:** ☐ Yes ☒ No **Match Amount:** None**Indirect Cost Rate:** ☐ Federal ☐ NICR ☐ de minimis ☒ None**Status of Contractor:** ☒ HOME Program Developer ☐ Contractor

CFDA	Grant Program	FY	National Funding	Pima County/City of Tucson Consortium Award
14.239	HOME Investment Partnerships Program (HOME)	2019	\$1,253,790,011.00	\$3,263,501.00

GRANT AGREEMENT**1.0 PARTIES, BACKGROUND AND PURPOSE**

- 1.1 This Agreement is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and Habitat for Humanity Tucson, Inc., a non-profit corporation doing business in the State of Arizona ("Developer").
- 1.2 In 1992 County and the City of Tucson ("City") formed the Pima County/City of Tucson Consortium ("the Consortium") pursuant to an intergovernmental agreement authorized by City of Tucson, in Resolution No. 16501, dated July 6, 1992, and by Pima County, the Urban County, in Resolution No. 1992-16, dated July 21, 1992, for the purpose of obtaining HOME Program funds. The 2020-2022 Consortium agreement is Pima County Contract No. CTN-CD-19*217.
- 1.3 The Consortium annually receives HOME funds from the U.S. Department of Housing and Urban Development ("HUD") for homeownership assistance and affordable housing programs in Pima County.
- 1.4 The Consortium allocated HOME funds to County through an Intergovernmental Agreement, County GTAW No. 19-111.
- 1.5 County may distribute its allocation of the Consortium's 2019-2020 HOME funds for qualified projects within its jurisdiction.

- 1.6 In November 2018, County issued a Notice of Funding Availability (Announcement No. “HOME 11.01.18”) seeking applications for projects qualified for 2019-2020 HOME funds.
- 1.7 Developer submitted a proposal to use 2019-2020 HOME funds to provide down-payment assistance to qualified low- and moderate-income homebuyers for eleven (11) single-family houses in its development known as Carter Court (the “Project”).
- 1.8 The Project qualifies as a HOME eligible activity under 24 CFR §92.205(a).
- 1.9 The Pima County Board of Supervisors finds that the Project is an appropriate and beneficial use of the County’s HOME funding.
- 1.10 The Pima County Board of Supervisors further finds that this use of HOME funds is consistent with the Consolidated Plan and Annual Action Plan of the Consortium that was submitted to and approved by HUD.

2.0 TERM AND EXTENSIONS

- 2.1 Original Term. This agreement will commence on October 6, 2020 and will terminate on October 5, 2021 (the “Initial Term”). “Term” when used in this Agreement, means the Initial Term plus any exercised Extension Options.
- 2.2 Extension Options. County may renew this Agreement for up to one (1) additional one year or any portion thereof (an “Extension Option”). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.
- 2.3 The term of this Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties. Any amendments to the Agreement must be approved by the County before any services under the amendment commences.
- 2.4 Minor modifications may be made by written memorandum approved and signed by the Director of the Pima County Community and Workforce Development Department or designee. Minor modifications are changes in the scope or budget, which do not change the specified purpose, outcomes or the total compensation provided through this Agreement and do not in any way increase the direct or indirect liability of the County under this Agreement.
- 2.5 Notwithstanding paragraphs 2.1 and 2.2 above, the terms of this Agreement will survive and remain in effect during any period that Developer has control over HOME funds., including program income, if any.
 - 2.5.1 The eligible homebuyers approved by Developer will receive HOME grant funds in the form of direct down-payment assistance. The homebuyers must conform to the HUD HOME requirements in 24 CFR 92.254(a) recapture provisions as provided in attached **Exhibit C**.

3.0 SCOPE OF SERVICES

- 3.1 Developer will:
 - 3.1.1 Provide the County with the services described in the attached **Exhibit A**.
 - 3.1.2 Employ suitably trained and skilled personnel to perform all services under this Agreement.
 - 3.1.3 Perform its duties in a humane and respectful manner and in accordance with any applicable professional standards.
 - 3.1.4 Unless otherwise provided for herein, the personnel delivering Agreement services will:
 - 3.1.4.1 Be employees or volunteers of the Developer;
 - 3.1.4.2 Satisfy any qualifications set forth in this Agreement; and

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

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

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

3.2 Confidentiality. Developer:

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

3.2.2 Will provide access to these files only to persons with a specific HOME-related need for the information.

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

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

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

4.0 MONITORING AND EVALUATION

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

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

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

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

4.2 Developer must cooperate in the monitoring and evaluation process by County, the City or Tucson and/or HUD.

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

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

4.5 To the greatest extent permissible by law, County, and any authorized federal, state or local agency, including, but not limited to, the U.S. Department of Housing and Urban Development, the Comptroller of the United States, and the City of Tucson, will at all reasonable times have the right of access to Developer's facility, books, documents, papers, or other records which are pertinent to this Agreement,

in order to make audits, examinations, excerpts and transcripts for the purpose of evaluating Developer's performance and Developer's compliance with this Agreement.

5.0 COMPENSATION AND PAYMENT

- 5.1 In consideration for services specified in **Exhibit A** of this Agreement, County agrees to pay Developer **up to \$275,000.00** ("the Maximum Allocated Amount").
- 5.2 Payment will be made from the HOME Grant received by the Consortium from HUD ("the awarding agency").
- 5.3 Payment of the full Maximum Allocated Amount is subject to the HOME funds being made available to County from either HUD or the City of Tucson for this Agreement. The Maximum Allocated Amount may be decreased at any time due to reduction, termination, or any other changes in funding. Unless specifically authorized by County, unexpended funds will not be carried over into another fiscal year.
- 5.4 Developer **must submit a request for reimbursement every month**, even if no funds are being requested for the prior month. Requests for reimbursement are due as follows:

Contract Month	Due date for Request for Reimbursement
January through April and July through December	30 calendar days from end of month
May	June 15
June	July 7

- 5.5 Requests for reimbursement must:
- 5.5.1 Reference this contract number.
- 5.5.2 Be approved and signed by both the person (s) that prepared the request and an authorized manager, supervisor or executive of the Developer to insure proper internal financial controls.
- 5.5.3 Be for services and costs as identified in **Exhibit A**.
- 5.5.4 Be accompanied by documentation which must include, but is not limited to:
- 5.5.4.1 A payment request and summary report of monthly expenditures by expense categories as shown in **Exhibit B** of this Agreement.
- 5.5.4.2 Copies of each executed Purchase Contract, including all addenda.
- 5.5.4.3 Copies of each executed Pima County HOME Program Homebuyer Assistance Program Agreements as shown in **Exhibit C** of this agreement.
- 5.5.4.4 Executed and complete copies of each Homebuyer Income Certification.
- 5.5.4.5 HUD-1 Settlement Statements (Final).
- 5.5.4.6 Executed and recorded copies of each Deed of Trust and Assignment of Rents in the form set forth in **Exhibit D**.
- 5.5.4.7 HUD Homebuyer Set Up and Completion Forms as shown in **Exhibit E**.
- 5.5.4.8 If applicable, Developer's report confirming value of sweat equity applied to the homebuyer's acquisition.
- 5.5.4.9 Certificates of Completion of Homebuyer Education for each homebuyer from a Pima County HUD approved housing counseling agency.
- 5.5.4.10 Any other documentation requested by County.

- 5.6 If Developer is required to provide matching funds under the terms of the awarding agency, Developer must also provide the documentation described in Paragraph 5.5 for the matching funds.
- 5.7 **Developer must utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.** Developer may not bill the County for costs which are paid by another source. Developer must notify County within ten (10) days of receipt of alternative funding for costs which would otherwise be subject to payment pursuant to this Agreement.
- 5.8 If each request for payment includes adequate and accurate documentation, County will generally pay Developer within thirty (30) days from the date invoice is received. Developer should budget cash needs accordingly.
- 5.9 County may, at its sole discretion:
- 5.9.1 Determine the acceptability and progress of work performed and determine the resulting entitlement to payment of each request for reimbursement.
 - 5.9.2 Liquidate funds available under this Agreement for costs incurred by County on behalf of Developer.
 - 5.9.3 **Deny full payment** for requests for reimbursement that are submitted to County after the date set forth in paragraph 5.4. County may deduct its processing costs or delay-related damages in connection with a request for payment submitted after that date.
 - 5.9.4 **Deny payment** for any request for reimbursement.
- 5.10 Pursuant to A.R.S. § 11-622, COUNTY **will deny reimbursement completely** for requests for payment made later than six months after the last item of the account accrues.
- 5.11 **REQUEST FOR FINAL PAYMENT** for compensation earned and/or eligible costs incurred must be submitted to the County within **15 working days after the end of the Agreement term**. The request must meet the requirements set forth in paragraph 5.5 above and include a report summarizing Developer's performance during the term of the Agreement.
- 5.12 **No payments will be made to Developer, until all of the following conditions are met:**
- 5.12.1 Developer has completed and submitted a W-9 Taxpayer Identification Number form;
 - 5.12.2 Developer has registered as a Pima County Vendor at the following web address -- <https://secure.pima.gov/procurement/vramp/login.aspx>;
 - 5.12.3 This Agreement is fully executed;
 - 5.12.4 Proof of Insurance. Developer shall have furnished to County proof that it has in place all the insurance policies required by Section 6.0 herein; and,
 - 5.12.5 Adequate and accurate documentation is provided with each request for payment or invoice.
- 5.13 Developer will report to County:
- 5.13.1 Accrued expenditures; and
 - 5.13.2 All other fiscal resources applied to expenses incurred in providing services under this Agreement.
- 5.14 Changes between budget line items may only be made as follows:
- 5.14.1 Changes of LESS than fifteen percent (15%) of the total budget amount may be granted by and at the sole discretion of the Director of Community and Workforce Development Department or designee. Developer must submit a written request and show that any proposed increase is offset by a decrease of equal value to the remaining line items. **The change will**

not be effective, nor will compensation under the change be provided, until the date set forth in the written approval of the Director or designee.

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

5.15 Disallowed Charges or Cost principles:

5.15.1 Pursuant to 2 CFR §2400.101, unless excepted under 24 CFR chapters I through IX, the cost principles set forth in 2 CFR part 200, Subpart E, as may be modified by amendments and additions, will be used to determine whether an incurred cost will be reimbursed under this Agreement.

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

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

6.0 INSURANCE

6.1 Developer shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. Pima County in no way warrants that the minimum limits contained herein are sufficient to protect the Developer from liabilities that might arise out of the performance of the work under this Agreement by the Developer, its agents, representatives, employees or subcontractors, and Developer is free to purchase additional insurance.

6.2 Minimum Scope and Limits of Insurance: Developer must have coverage with limits of liability not less than those stated below. Policy shall include bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and projects – completed operations.

6.2.1 Commercial General Liability (CGL) – Occurrence Form

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

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

6.2.1.2 Policy must be endorsed to include the following additional insured language: **“Pima County is named an additional insured with respect to liability arising out of the activities performed by or on behalf of the Primary Insured”.**

6.2.1.3 Policy must contain a waiver of subrogation against Pima County, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Developer.

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

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

- 6.2.2.2 Policy must be endorsed to include the following additional insured language: **“Pima County is named an additional insured with respect to liability arising out of the activities performed by or on behalf of the Developer, involving automobiles owned, leased, hired or borrowed by the Developer”.**
- 6.2.2.3 Policy must contain a waiver of subrogation against Pima County, its departments, agencies, boards, commissions and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Developer.
- 6.2.3 Worker's Compensation and Employers' Liability: Statutory requirements and benefits for Workers' Compensation (WC). In Arizona, WC coverage is compulsory for employers of one or more employees.
 - 6.2.3.1 Workers' Compensation: Amount required by statute.
 - 6.2.3.2 Employers' Liability:

Each Accident	\$1,000,000.00
Disease – Each Employee	\$1,000,000.00
Disease – Policy Limit	\$1,000,000.00
 - 6.2.3.3 Policy must contain a waiver of subrogation against Pima County, its departments, agencies, boards, commissions and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Developer.
 - 6.2.3.4 This requirement will not apply separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.
- 6.2.4 Professional Liability (Errors and Omissions) Insurance: This insurance is required when the Professional Liability or any other coverage is excluded from the above GCL policy. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance policy shall cover professional misconduct or negligent acts of anyone performing any services under this Agreement and during the Affordability Period defined in **Exhibit A**.
- 6.3 Additional Insurance Requirements: The policies must contain, or be endorsed to contain, the following provisions:
 - 6.3.1 Additional Insured: The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, agents, and employees as additional insured with respect to liability arising out of the activities performed by or on behalf of the Developer.
 - 6.3.2 Primary Insurance: Developer's insurance coverage will be primary insurance and non-contributory with respect to all other available sources and any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance.
 - 6.3.3 Subrogation: The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Developer.
 - 6.3.4 Coverage provided by the Developer will not be limited to the liability assumed under the indemnification provisions of this Agreement.
 - 6.3.5 The Project Name, Agreement Number, appropriate County Department and project description must be noted on the Certificate of Insurance. Pima County reserves the right to require complete copies of all insurance policies required by this Agreement at any time.

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

- 6.4 Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Pima County. Such notice must be sent by certified mail, return receipt requested directly to:

Pima County Community and Workforce Development Department Attn: HOME Program Manager 801 W. Congress ST. Tucson, AZ 85745

- 6.5 Verification of Coverage: Developer shall furnish Pima County with certificates of insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.
- 6.5.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences.
- 6.5.2 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 Developer, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.
- 6.6 Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona and County in no way warrant that the above-required minimum insurer rating is sufficient to protect the Developer from potential insurer insolvency.
- 6.7 Approval and Modifications: Pima County Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Agreement amendment, but the approval must be in writing.

7.0 INDEMNIFICATION

- 7.1 To the fullest extent permitted by law, Developer will defend, indemnify and hold harmless Pima County, and any related taxing district, and the officials and employees and each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees)(collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Developer or any of Developer's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation law or arising out of the failure of Developer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Developer from and against any and all claims. Developer is responsible for primary loss investigation, defense and judgement costs for any claim to which indemnity applies. This indemnity will survive the expiration or termination of this Agreement.
- 7.2 Developer warrants that services provided under this Agreement are non-infringing. Developer will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this Agreement or from the provision, license, transfer or use for their intended purpose of any products provided under this Agreement.

8.0 COMPLIANCE WITH LAWS

- 8.1 Compliance with Laws; Changes. Developer will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. Any changes in the governing laws, rules, and regulations during the terms of this Agreement will apply, but do not require an amendment.
- 8.2 Choice of Law; Venue. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement must be brought in a court of the State of Arizona in Pima County.
- 8.3 Licensing. Developer warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.
- 8.4 Compliance with 24 CFR Part 92. Developer will comply with any applicable requirements of 24 CFR Part 92, including subpart H of these regulations, except the Developer does not assume:
 - 8.4.1 County's environmental responsibilities described in 24 CFR 92.352; and
 - 8.4.2 County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.
- 8.5 Use of HOME Funds. Developer warrants that HOME funds provided or personnel employed in the administration of the Project funded under this Agreement will not be used for:
 - 8.5.1 Political activities;
 - 8.5.2 Inherently religious activities;
 - 8.5.3 Lobbying to influence the outcome of any election or the award of any federal contract, grant, loan or cooperative agreement (*see* Federal Standard Form LLL, "Disclosure of Lobbying Activities);
 - 8.5.4 Political patronage; or
 - 8.5.5 Nepotism activities.
- 8.6 Compliance with Federal Law, Rules and Regulations. Developer will comply with the applicable provisions of:
 - 8.6.1 Davis-Bacon Act (Public Law 107-217), as amended;
 - 8.6.2 Contract Work Hours and Safety Standards Act (40 USC 327 *et seq.*);
 - 8.6.3 Copeland Anti-Kick Back Act (18 USC 874 *et seq.*);
 - 8.6.4 Section 3 of the HUD Act of 1968 as amended;
 - 8.6.5 Fair Housing Act (42 U.S.C. 3601-3620) and Presidential Executive Orders;
 - 8.6.6 Section 504 of the Rehabilitation Act of 1973;
 - 8.6.7 Section 202 of the Flood Disaster Protection Act of 1973 (U.S.C. 4106);
 - 8.6.8 Project Based Section 8 Program (24 CFR 983);
 - 8.6.9 Low-Income Housing Tax Credit Program (IRC Section 42);
 - 8.6.10 Affirmative marketing and minority outreach;
 - 8.6.11 Lead-based paint;
 - 8.6.12 Violence Against Women Act (VAWA) 42.U.S.C.13925 requirements; and
 - 8.6.13 All rules and regulations applicable to the Acts set forth above.

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

9.0 INDEPENDENT CONTRACTOR

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

10.0 SUBCONTRACTORS

- 10.1 Except as provided in paragraph 10.2, Developer will not enter into any subcontracts for any services to be performed under this Agreement without County's prior written approval of the subcontract. Developer must follow all applicable Federal, State, and County rules and regulations for obtaining subcontractor services.
- 10.2 Prior written approval is not required for the purchase of supplies that are necessary and incidental to Developer's performance under this Agreement.
- 10.3 Developer will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts, any of them, may be liable to the same extent that the Developer is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract will create any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
- 10.4 Developer must include the provision set forth in paragraph 4.5 in all contracts between Developer and its subcontractors providing goods or services pursuant to this Agreement. Developer will be responsible for subcontractors' compliance with that provision and for any disallowances or withholding of reimbursements resulting from noncompliance of said subcontractors with the provision.

11.0 ASSIGNMENT

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

12.0 NON-DISCRIMINATION

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

- 12.3.1 Titles VI and VII of the Civil Rights Act of 1964 as amended;

- 12.3.2 The Age Discrimination in Employment Act;
- 12.3.3 Section 504 of the Rehabilitation Act of 1973, as amended; and
- 12.3.4 The requirements of the Fair Labor Standards Act of 1938, as amended.

13.0 AMERICANS WITH DISABILITIES ACT

Developer will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If Developer is carrying out a government program or services on behalf of County, then Developer will maintain accessibility to the program to the same extent and degree that would be required by the County under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

14.0 AUTHORITY TO CONTRACT

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

15.0 FULL AND COMPLETE PERFORMANCE

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

16.0 CANCELLATION FOR CONFLICT OF INTEREST

- 16.1 This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
- 16.2 Developer agrees to comply with all applicable conflict of interest provisions contained in Federal laws and regulations that govern the awarding agency including 24 CFR §92.356.

17.0 TERMINATION AND SUSPENSION

- 17.1 Without Cause: County reserves the right to terminate this Agreement at any time and without cause by serving upon Developer thirty (30) days advance written notice of such intent to terminate. In the event of such termination, the County's only obligation to Developer will be payment for services rendered prior to the date of termination.
- 17.2 With Cause: Except as set forth in paragraph 4.4, County may terminate this Agreement at any time without advance notice and without further obligation to County finds Developer to be in default of any provision of this Agreement.
- 17.3 Insufficient Funds: Notwithstanding Paragraphs 17.1 and 17.2 above, if any state or federal grant monies used to pay for performance under this Agreement are reduced or withdrawn, County will have the right to either reduce the services to be provided and the total dollar amount payable under this Agreement or terminate the Agreement. To the extent possible, County will endeavor to provide fifteen (15) days written notice of such reduction or termination. In the event of a reduction in the amount payable, County will not be liable to Developer for more than the reduced amount. In the

event of a termination under this paragraph, County's only obligation to Developer will be payment for services rendered prior to the date of termination to the extent that grant funds are available.

- 17.4 Non-Appropriation: Notwithstanding any other provision in this Agreement, this Agreement may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Agreement. In the event of such termination, County will have no further obligation to Developer, other than for services rendered prior to termination.
- 17.5 Suspension: County reserves the right to suspend Developer's performance and payments under this Agreement immediately upon notice delivered to Developer's designated agent in order to investigate Developer's activities and compliance with this Agreement. In the event of an investigation by County, Developer will cooperate fully and provide all requested information and documentation. At the conclusion of the investigation, or within forty-five (45) days, whichever is sooner, Developer will be notified in writing that the contract will be immediately terminated or that performance may be resumed.

18.0 NOTICE

- 18.1 Developer must give written notice of any change of corporate or entity status as promptly as possible and, in any event, within fifteen (15) days after the change is effective. A change in corporate or entity status includes, but is not limited to, change from unincorporated to incorporated status and vice versa and any suspension or termination of corporate status based on failure to comply with all applicable federal, state, and local reporting requirements.
- 18.2 Any notice required or permitted to be given under this Agreement must be in writing and must be served by delivery or by certified mail upon the other party as follows:

County:

Daniel Tylutki, Deputy Director
Pima County Community and Workforce
Development Department
2797 E. Ajo Way
Tucson, AZ 85713
(520) 724-6754

Developer:

T VanHook Schuld, Chief Executive Officer
Habitat for Humanity Tucson, Inc.
3501 N. Mountain Ave.
Tucson, AZ 85719

19.0 OTHER DOCUMENTS

- 19.1 In entering into this Agreement, Developer and County have relied upon information provided in Developer's proposal submitted in response to Pima County Solicitation identified in the recitals of this Agreement ("the RFP") including the Instructions to Bidders, Standard Terms and Conditions, Specific Terms and Conditions, Solicitation Addenda, Developer's Proposal, other information and documents submitted by the Developer in its' response to said Solicitation.
- 19.2 The documents set forth in Paragraph 19.1 are hereby incorporated into and made a part of this Agreement as if set forth in full herein, to the extent not inconsistent with the provisions of this Agreement, including all exhibits. Developer will promptly bring any provisions which Developer believes are inconsistent to County's attention, and County will provide Developer with its interpretation of the provisions in question. In the event of an irreconcilable inconsistency, the provisions of the awarding agency documents will govern over the conditions of this Agreement, unless otherwise required by law.

20.0 BOOKS AND RECORDS

- 20.1 Developer will keep and maintain all records specified in 24 CFR § 92.508 which are pertinent to the activities funded under this Agreement. All such records will be open for inspection and audit by duly authorized representatives of County during normal business hours. Records include, but are not limited to:
- 20.1.1 A full description of each action or activity taken to comply with this Agreement;
 - 20.1.2 Demonstration that the actions and activities meet the intent of the HOME program;
 - 20.1.3 Eligibility documentation and determination;
 - 20.1.4 Documentation of compliance with the fair housing and equal opportunity components of the HOME program;
 - 20.1.5 Documentation of down payment assistance justification, including homebuyer eligibility, property eligibility and long term affordability;
 - 20.1.6 Disbursements of funds;
 - 20.1.7 Financial records required under 24 CFR §92.508(a)(5); and
 - 20.1.8 Documentation of compliance with Subpart H of 24 CFR Part 92.
- 20.2 Developer must retain all records pertaining to this Agreement for five (5) years after the end of the HOME Affordability Period or until completion of any action and resolution of all issues which arise from any related litigation, claim, negotiations, audit or other action involving the records that was started before the expiration of the 5-year period, whichever is later.

21.0 AUDIT REQUIREMENTS

- 21.1 Developer will:
- 21.1.1 Comply with the applicable provisions of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Parts 200 and 2400).
 - 21.1.2 **Establish and maintain a separate, identifiable accounting of all funds provided by County under this Agreement.** The accounting must record all expenditures which are used to support invoices and requests for payment from the County.
 - 21.1.3 Establish and maintain accounting records which identify the source and application of any funds not provided under this Agreement used to support these Agreement activities.
 - 21.1.4 Ensure that all accounting records meet the requirements of the Federal, State, County, and generally accepted accounting principles laws and regulations.
 - 21.1.5 Upon written notice from County, provide a program-specific or financial audit. Such notice from County will specify the period to be covered by the audit, the type of audit and the deadline for completion and submission of the audit.
 - 21.1.6 Assure that any audit conducted pursuant to this Agreement is performed by a qualified, independent accounting firm and submitted to County within six (6) months of completion of the audit required pursuant to this Section 21.0, unless a different time is specified by County. The audit submitted must include Developer's responses, if any, concerning any audit findings.
 - 21.1.7 Pay all costs for any audit required or requested pursuant to this Section 21.0, unless the cost is allowable for payment with the grant funds provided pursuant to this Agreement under the appropriate federal or state grant law and the cost was specifically included in the Developer grant budget approved by County.

21.2 Developer status:

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

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

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

Pima County Community and Workforce Development Department
Attn: HOME Program Manager
Pima County Housing Center
801 W Congress Street
Tucson, AZ 85745

22.0 COPYRIGHT

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

23.0 PROPERTY OF THE COUNTY

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

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

24.0 DISPOSAL OF PROPERTY

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

25.0 COORDINATION

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

26.0 PUBLIC INFORMATION

26.1 Disclosure. Pursuant to Arizona Public Records law, A.R.S. § 39-121 *et seq.*, and A.R.S. § 34-603(H) in the case of construction or architectural and engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in an award of this Agreement, including, but not limited to pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

26.2 Records Marked Confidential; Notice and Protective Order.

- 26.2.1 If Developer reasonably believes that some of the records described in paragraph 26.1 above contain proprietary, trade-secret or otherwise-confidential information, Developer must prominently mark those records "CONFIDENTIAL."
- 26.2.2 In the event that a public records request is submitted to County for records marked "CONFIDENTIAL," County will notify Developer of the request as soon as reasonably possible.
- 26.2.3 County will release the records ten (10) business days after the date of notice provided pursuant to paragraph 26.2.2 unless Developer has, within that period, secured an appropriate order from an Arizona court of competent jurisdiction, enjoining the release of the records.
- 26.2.4 County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

27.0 ELIGIBILITY FOR PUBLIC BENEFITS

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

28.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE

- 28.1 Compliance with Immigration Laws. Developer hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to Developer's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Developer will further ensure that each subcontractor who performs any work for Developer under this Agreement likewise complies with the State and Federal Immigration Laws.
- 28.2 Books and Records. County has the right at any time to inspect the books and records of Developer and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 28.3 Remedies for Breach of Warranty. Any breach of Developer's, or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this Section 28.0, is a material breach of this Agreement subjecting Developer to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Developer will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Developer.
- 28.4 Subcontractors. Developer will advise each subcontractor of County's rights, and the Prime Contractor's and subcontractor's obligations, under this Section 28.0 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 Agreement 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 Agreement."

29.0 REMEDIES

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

30.0 SEVERABILITY

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

31.0 NON-EXCLUSIVE AGREEMENT

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

32.0 NO THIRD PARTY BENEFICIARIES

Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

33.0 ISRAEL BOYCOTT CERTIFICATION

Pursuant to A.R.S. § 35-393.01, if Developer engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Developer certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

34.0 ENTIRE AGREEMENT

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

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

34.3 This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

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

PIMA COUNTY

Chairman, Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board

Date: _____

APPROVED AS TO CONTENT:

Marcos Pinal for the Director, 9/9/2020
Director, Community and Workforce Development Department, or designee Date

Date: _____

APPROVED AS TO FORM:

Christopher L. Straub 09/08/2020
Christopher L. Straub, Deputy County Attorney

DEVELOPER

T VanHook
Authorized Signatory

T VanHook, CEO
Printed name & title

Date: 08/09/2020

EXHIBIT A

SCOPE OF WORK

1. Project Title and Location:

- 1.1. Title: Carter Place, a single-family home development located in the Flowing Wells neighborhood, a Pima County Target Area, Tucson, AZ 85705 as shown in the plat map in attached **Exhibit A, Attachment 1**.

1.2. Project Homes:

- 1.2.1. Eleven single-family homes will be built on:

House Address on W. Rosalynn Place	Lot No.
2710	10
2719	11
2720	9
2729	12
2730	8
2739	13
2749	14
2759	15
2769	16
2779	17
2789	18

- 1.2.2. The Project Homes will conform to the following sizes and floorplans:

Number of Units	# Bedrooms	# Baths	SF Living Space	# Car Garage
1	2	1	868 SF	1
5	3	2	1,304 SF	2
1	4	2	1,597 SF	2
4	5	2	1,667 SF	2

- 1.2.3. All eleven (11) homes will be new construction single family units that, at a minimum, must:

- 1.2.3.1. Be frame and stucco construction with tile roofs, exterior color choice with set pallet and gray water harvesting landscaping;
- 1.2.3.2. Be Energy Star® qualified in compliance with the National Home Energy Rating System guidelines and include ceiling fans, blinds and epoxy-coated floors; and

1.2.3.3. Meet all applicable local codes, ordinances, and zoning requirements, including any disaster mitigation standards.

2. **Purpose.** Provide direct down payment assistance to eleven (11) qualified, eligible, low-income homebuyers for the purchase of a new home constructed by Developer and described in Section 1 above.

3. **Project Activities – Downpayment Assistance.**

3.1. Developer will:

- 3.1.1. Complete all environmental reviews prior to expenditure of funds as provided by HUD HOME Program regulations at 24 CFR Part 92.
- 3.1.2. Provide down payment assistance including closing costs, if necessary, to eleven (11) qualified homebuyers in an amount not to exceed \$25,000 per homebuyer, for the purchase of one of the eleven new homes described in Section 1.2.
- 3.1.3. Provide more than \$25,000.00 only with the County's Housing Program Manager written approval prior to closing.
- 3.1.4. Ensure that the homes are modest and affordable, as required by HUD HOME Program regulations at 24 CFR 92.254, to households earning at or below 80% Area Median Income (80% AMI).
- 3.1.5. Provide each household with a below market rate Habitat for Humanity Affordable Mortgage Program loan (unless an alternate financing program is approved in writing by County prior to closing), down-payment assistance provided under this Agreement and, if needed, down-payment assistance from other sources.
- 3.1.6. Actively market Carter Court to low-income households in Pima County. All marketing efforts will be in accordance with affirmative fair marketing guidelines found at 24 CFR 92.351.
- 3.1.7. Within thirty (30) days of the effective date of this Agreement, complete and submit to County the Affirmative Fair Housing Marketing Plan as shown in **Exhibit F**, or provide a comparable plan which conforms to the guidelines set forth in of 24 CFR Part 92.351 for County approval.
- 3.1.8. Determine homebuyer's eligibility for down payment assistance as follows:
 - 3.1.8.1. Obtain an application for the assistance;
 - 3.1.8.2. Ensure that household income is no more than 80% AMI; and
 - 3.1.8.3. Ensure that homebuyers are aware of the HOME affordability requirements and understand that, in order to avoid paying back the money provided for the purchase pursuant to this Agreement, the assisted home must be the principal place of resident throughout the period of affordability.
- 3.1.9. After a homebuyer's eligibility has been confirmed and prior to closing:

- 3.1.9.1. Submit homebuyer application information to County for HUD HOME Program review and final funding approval at least 15 days prior to close of escrow;
- 3.1.9.2. Confirm that the buyer's household income does not and will not exceed 80% AMI on the date of closing;
- 3.1.9.3. Ensure that the assistance provided does not exceed the amount needed to fund the homebuyer's documented affordability gap (the difference between the total sum of the mortgage and down payment funds, including all grants or subsidies, and the total purchase price which includes closing costs); and
- 3.1.9.4. Assist homebuyer in applying and qualifying for the below market rate Habitat for Humanity Affordable Mortgage Program loan.
- 3.1.10. Require all adult members of the household to attend a homebuyer education and counseling program provided by a HUD approved housing counseling agency.
- 3.1.11. Ensure that each homebuyer understands and executes the Pima County HOME Program Homebuyer Assistance Agreement, attached in **Exhibit C**.
- 3.1.12. Perform program delivery services including coordination with escrow and loan officers, authorization and transmittal of payment, file completion and reporting.
- 3.1.13. Ensure that, at closing, a HOME Promissory Note, as shown in **Exhibit D Attachment 1**, is executed in the amount of the HOME funds provided on behalf of the homebuyer. The HOME Promissory Note must be secured by a fully executed Deed of Trust, in the form set forth in **Exhibit D**, and recorded in the Office of the Pima County Recorder, listing Pima County as the beneficiary for the duration of the HOME affordability period as set forth in Section 6 below. **Failure to record the Deed of Trust will constitute a default and Developer will be required to immediately repay to County the amount of HOME funds provided to the particular homebuyer.**
- 3.1.14. Complete HOME Program Completion Report attached as **Exhibit E** for each assisted homebuyer and submit to County with executed copies of Homebuyer Assistance Agreement, HOME Promissory Note, and Deed of Trust.
- 3.1.15. If appropriate, adult homebuyers may be required to participate in Developer's sweat equity program.
- 3.2. County will:
 - 3.2.1. Prior to each closing, verify assisted households are low-income at 80% AMI or below.
 - 3.2.2. Provide HOME Program Homebuyer Assistance Agreement, and legal documents, including Deed of Trust and Promissory Note, for completion at closing and recordation immediately thereafter.
 - 3.2.3. Provide Technical Assistance, as needed, to carry out HOME program objectives.

4. Project Goal and Predicted Outcomes.

- 4.1. **Goal:** Assist eleven (11) low-income, first-time homebuyers.

- 4.2. **Predicted outcomes:** Provide down payment assistance, which may include closing costs, to make possible homeownership for eleven (11) qualified, low-income, households.

5. Public benefit – HOME Eligible Activity - Homeownership:

Upon completion, the expenditure of HOME funds for down payment assistance will meet the HUD HOME Program objective to strengthen public-private partnerships and expand the supply of decent, safe, sanitary and affordable housing with primary attention to low-income families in the form of down payment assistance (24 CFR 92.1 and 92.205(g)).

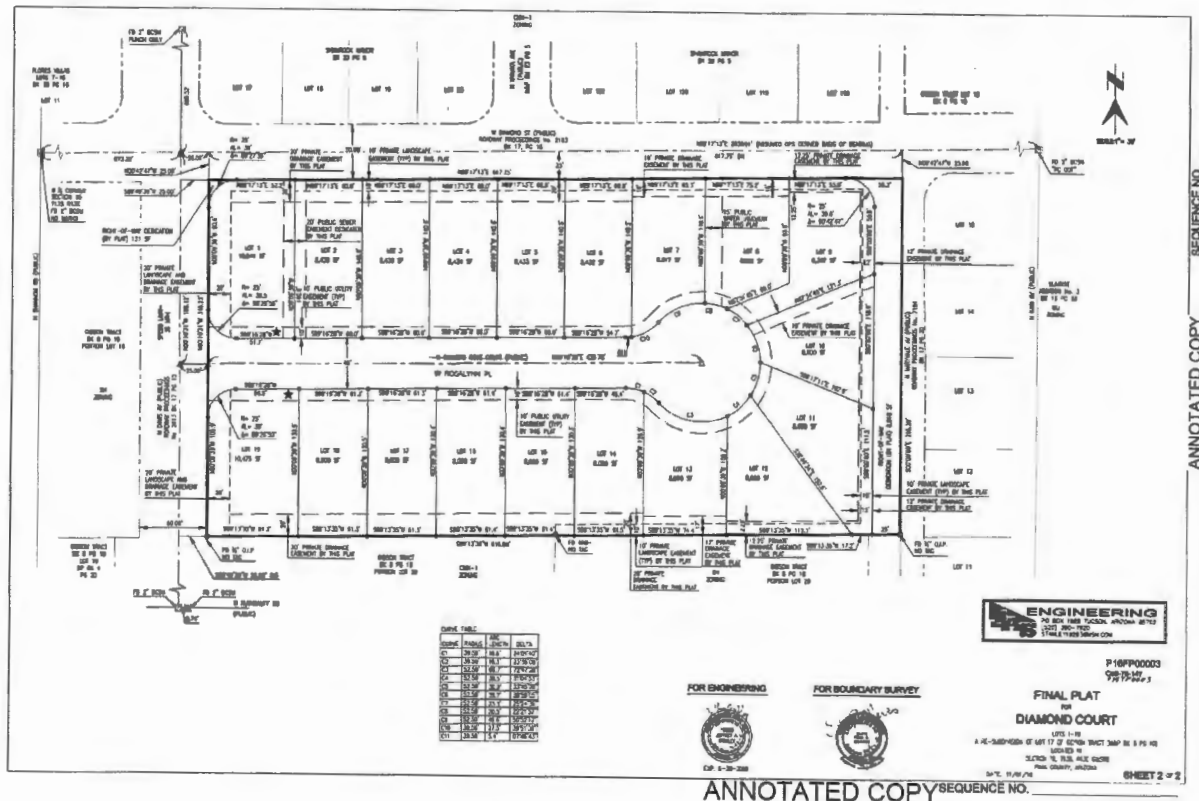
6. Affordability Period.

For ten (10) years beginning on the date of closing (“the Affordability Period”), each home purchased using down-payment assistance provided pursuant to this Agreement must be occupied by the Homebuyer as their primary residence.

7. Reports.

- 7.1. Upon Completion of the Project, Developer will provide the following report for each assisted household:
- 7.1.1. Copy of executed Purchase Contract including all addenda;
 - 7.1.2. Executed and complete copy of Homebuyer Income Certification;
 - 7.1.3. HUD-1 Settlement Statement (Final);
 - 7.1.4. Executed copy of Pima County HOME Program Homebuyer Assistance Program Agreement (**Exhibit C**);
 - 7.1.5. Executed and Recorded copy of the Performance Deed of Trust and Assignment of Rents for Pima County HOME Program (**Exhibit D**);
 - 7.1.6. Executed copy of the Promissory Note (**Exhibit D-Attachment 1**);
 - 7.1.7. HUD Homebuyer Set Up and Completion Form (**Exhibit E**);
 - 7.1.8. If applicable, Developer report confirming value of sweat equity applied to the homebuyer’s acquisition; and
 - 7.1.9. Certificate of Completion of Homebuyer Education from a Pima County HUD approved housing counseling agency.
- 7.2. All reporting provisions will survive the termination of this Agreement.
8. **Budget.** Up to \$25,000.00 may be provided as Homebuyer Down Payment Assistance to each eligible buyer of a Project Home. Total Budget is \$275,000.00

EXHIBIT A – ATTACHMENT 1 **CARTER COURT (FORMERLY KNOWN AS DIAMOND COURT) PLAT MAP**



END OF EXHIBIT A

EXHIBIT B

PAYMENT REQUEST FORM & MONTHLY REPORT

HABITAT FOR HUMANITY TUCSON, INC. – CARTER COURT

For the Month of _____, 20_____

HOME Contract No. CT-CD 21*116 Request for Payment/Progress Report*				
Description	Total HOME Budget	HOME Funds Expended This Month	HOME Funds Expended Prior Month(s)	HOME Funds Expended to Date
Homebuyer Down Payment Assistance	\$275,000.00			
Total	\$275,000.00			

**When there are no HOME Funds Expended for the Monthly Report, enter N/A or \$0.00 in the column entitled "HOME Funds Expended This Month."*

ADDITIONAL PROJECT INFORMATION FOR REPORTING PERIOD:

- Homebuyer Eligibility Certification and Supporting Documentation have been submitted to and approved by Pima County HOME Program Manager prior to Closing:
 - ☐ YES ☐ NO
- Homebuyer Assistance Program Agreement Signed, Executed by Homebuyers, Developer; Received by Pima County HOME Program Manager prior to Closing:
 - ☐ YES ☐ NO
- Monthly Activity Summary:
- Milestones completed:
- Problems encountered:



Exhibit C

PIMA COUNTY HOME PROGRAM HOMEBUYER ASSISTANCE PROGRAM AGREEMENT

This HOME Program Agreement is executed by and between _____
(Homebuyer(s)), and Habitat for Humanity Tucson, a non-profit organization (Developer) and Pima County
Community and Workforce Development Department (Program Administrator).

Part A. Homebuyer's Certification of Principal Residency

Homebuyer's Name(s): _____

Homebuyer's Current Address _____

Address of Home to be purchased: _____

Eligible Activity: ☐ **Homebuyer Assistance**

I/We hereby certify that I/we will occupy the above referenced address and it will be my/our principal residence throughout the required affordability period of _____ (____) years (from the date the home purchase closes escrow).

I/We understand that my/our acceptance of the down payment and/or closing cost assistance/or principal reduction/or rehabilitation assistance through the HOME Program will result in the attachment of a Junior Lien (Deed of Trust and Assignment of Rents) in favor of the above referenced Program Administrator.

I/We further certify that all information and copies of documents provided to Habitat for Humanity-Tucson, Inc. (Developer) are true and correct.

I/We understand that any discrepancies or misstatements may result in my/our disqualification from the HOME Program and possible repayment of the assistance received.

Signature of Homebuyer/Homeowner

Date

Signature of Homebuyer/Homeowner

Date

Signature of Developer

Date

Signature of Program Administrator

Date

WARNING: Title 18, Section 1001 of the U.S. code states that a person is guilty of a FELONY for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

Part B. Value of the Property

The Purchase Price of the Residence is \$ _____

The Appraised Value of the Residence is \$ _____

Part C. Recapture and Refinance Provisions

Transfer, Sale, Refinance, Exchange, Rent or Lease of Subject Property: In the event homebuyer(s) transfers, devises, refinances, sells, exchanges, rents or leases the subject property, regardless of the terms or conditions of such transfer, sale, or exchange **within the first ten (10) years of ownership (Affordability Period)**, or fails to maintain the property as their primary residence during the Affordability Period, the full amount of the HOME Subsidy will be repaid. The homebuyer agrees to maintain the property as their primary residence throughout the ten year affordability period as described below:

1. HOME Subsidy repayment, including any interest due pursuant to this Note, shall be made from the net proceeds of the sale, but only to the extent that such proceeds are in excess of the first mortgage pay-off, customary settlement charges and the Homebuyer's Equity.
2. So long as Homebuyer(s) is compliance with the terms of the forgivable deferred loan and shall occupy the real property which is the subject of this Agreement as their primary residence, no payments of principal shall be required. **After the Affordability Period (10 years) has expired, Homebuyer will not be required to occupy property as the principal residence and the Program Administrator shall consider this note satisfied.**
3. **REFINANCING:** The County (Program Administrator) will allow their lien to be placed in second or subordinate position to subsequent refinanced mortgages **only** if the refinance results in a **lower monthly housing payment** and total loan to value (LTV) does not exceed 90%. Exceptions may be considered to refinance for a rate or term reduction that does not take out additional cash or equity. The Homebuyer/Homeowner must demonstrate that the proposed financial transaction will produce a clear distinct financial benefit. No refinancing will be permitted when cashing out solely for consolidation of credit card or revolving debt for any reasons other than to finance necessary home repairs or improvements.

Part D. Use and Amounts of HOME Funds

In order to assist Homebuyer or Homeowner to purchase or rehabilitate the residence, Habitat for Humanity Tucson (Developer) is providing County HOME Program funds in an amount of \$ _____.

Part E. Form of Assistance

The foregoing financial assistance is being provided in the form of *forgivable deferred loan*. In connection with forgivable deferred loan, the homebuyer or homeowner is executing a Promissory Note and a Deed of Trust and Assignment of Rents securing compliance with terms and conditions set forth therein throughout the Affordability Period. The Deed of Trust and Assignment of Rents is recorded against the property as a security instrument, which will be junior to the mortgage lien, in order to guarantee compliance with the HUD HOME Program funding regulations.

Part F. Acquisition Time

Homebuyer represents that Homebuyer intends to purchase the residence within 60 days of the date of this HOME Agreement. Homebuyer or Homeowner understands and agrees that if Homebuyer or Homeowner does not purchase the residence within 60 days of the date of this HOME Agreement, the Developer may at its sole option: (1) not provide HOME funding; or (2) extend the date to purchase of the residence for a reasonable period of time, not to exceed an additional 30 days.

Part G. Execution of Written Agreement

I/We acknowledge that I/we have received a copy of the foregoing fully executed HOME Agreement and that the requirements, terms and conditions thereof were explained to me/us.

Homebuyer

Homebuyer

STATE OF ARIZONA)
) ss.
County of Pima)

This instrument was acknowledged before me this _____ day of _____, 202__, by _____ for the purposes therein contained.

NOTARY PUBLIC

My commission Expires: _____

STATE OF ARIZONA)
) ss.
County of Pima)

This instrument was acknowledged before me this _____ day of _____, 20__, by _____ for the purposes therein contained.

NOTARY PUBLIC

My commission Expires: _____

Developer Authorized Signature

Date _____

Program Administrator's Director or designee

Date _____

End of Exhibit C

EXHIBIT D

RETURN TO:

Pima County Community and Workforce Development Department
Attn: HOME PROGRAM MANAGER
Pima County Housing Center
801 W Congress St, Tucson, AZ 85745

DEED OF TRUST AND ASSIGNMENT OF RENTS PIMA COUNTY HOME PROGRAM

Date_____, 20_____

TRUSTOR (S):_____

whose mailing address is:

(Number and Street) (City) (State) (Zip Code)

TRUSTEE:

whose mailing address is:

(Number and Street) (City) (State) (Zip Code)

BENEFICIARY: Pima County, an Arizona body politic,

whose mailing address is:

Pima County Community and Workforce Development Department
Attn: HOME Program Manager
Pima County Housing Center
801 W. Congress St.
Tucson, AZ 85745

Property situated in the County of Pima, State of Arizona, as described as follows:

Together with all buildings, improvements and fixtures thereon or hereinafter erected thereon.

STREET ADDRESS IF ANY, OR IDENTIFIABLE LOCATION OF THIS PROPERTY:

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust"), made on the above date by, between and among the TRUSTOR, TRUSTEE and BENEFICIARY above named.

WITNESSETH that Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee in Trust, with Power of Sale, the above described real property ("Trust Property"), together with leases, issues, profits, or income therefrom (all of which are hereinafter called "property income"): SUBJECT, however, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income:

SUBJECT TO: Current taxes and all other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

FOR THE PURPOSE OF SECURING:

- A. Payment of the indebtedness in the principal sum of \$ _____, together with any interest payment due, as evidenced by a Promissory Note or Notes of even date herewith, as provided by Attachment 1 herein, and any extension or renewal thereof, executed by Trustor in favor of Beneficiary or order.
- B. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a Promissory Note or Notes reciting that they are secured by a Deed of Trust.
- C. Performance of each agreement of Trustor herein contained.

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

- 1. To keep said property in good condition and repair; not to remove or demolish any building, thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said property in violations of law; and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
- 2. To provide, maintain, and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy 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.
- 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 Deed of Trust.

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

Should Trustor fail to make any payment or to do any act as herein provided, the 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 being authorized to enter upon said 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.

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

IT IS MUTUALLY AGREED:

6. That any award of damages in connection with any condemnation or any such taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and the ownership thereof subject to this Deed of Trust) and upon receipt of such moneys Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
7. That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
8. That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement, and without liability therefor, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of said property; (b) consent to the making and recording, or either, of any map or plot of the property or any part thereof; (c) join in granting any easement thereon; (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge hereof.
9. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
10. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder,

to collect and retain such property income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such property income, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such property income, and the application thereof as aforesaid, shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

11. That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, 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 said property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, said note(s), and all documents evidencing expenditures secured hereby.
 - a. 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, said 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 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.
 - b. 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, 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.
 - c. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available him hereunder and at law or in equity. All rights and remedies shall be cumulative.
12. That 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, by registered or certified mail, and by recordation of a Notice of Resignation of Trustee in the office of the County Recorder in each county in which the trust property or some part thereof is situated.
13. That this Deed of Trust applies to, insures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
14. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Additional Terms and Conditions:

15. If the Federal Housing Authority (FHA) insures the first lien on the Trust Property, any restrictions on transferability of the Trust Property will automatically terminate if the Title to the Trust Property is transferred

by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned the Secretary of Housing and Urban Development (HUD).

16. The lien of this deed of trust is junior and subordinate to the lien of that certain deed of trust executed by _____, Trustor(s) to _____, Beneficiary, dated _____, securing a promissory note of even date in the amount of \$ _____, being recorded concurrently herewith.
17. The undersigned Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to him at his address hereinbefore set forth.
18. Due on Sale. The sale, transfer, exchange, encumbrance, rental or leasing of the Trust Property to anyone other than a Family Member as defined herein, at any time within the term of the Promissory Note secured by this Deed of Trust, shall constitute a default under the terms of this Deed of Trust, and upon such event 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 the Trust Property to be sold under this Deed of Trust. For purposes of this Deed of Trust, the following terms shall have the following meanings:

“Exchange” means a transfer or conveyance of title to the Subject Property, or contractual obligation to transfer or convey such title, in consideration of or in return for receipt of title to, or the right to use, or contractual right to receive title to, or the right to use, other property, real or personal, having more than nominal or potentially more than nominal pecuniary value.

“Family Member” means any person who is a parent, child, sibling or spouse of the original Maker(s). When the original Maker(s) transfers, exchanges or devises the Subject Property or any part thereof, to a family member that qualifies as low-income according to HUD guidelines, that new title holder is a Maker(s) and becomes subject to all rights, duties, conditions and limitations of an original Maker(s) thereunder including the restrictions imposed regarding a subsequent sale, transfer, exchange, or devise of the Subject Property.

“Sale” means a transfer or conveyance of title to the Subject Property, or contractual obligation to transfer or convey such title or the right to use. The consideration for a sale is to be paid by cash or equivalent in part or in whole.

“Transfer” means any alienation of the Subject Property other than by gift deed or similar instrument to a Family Member, or by conveyance to anyone, including the right to use.

Truster

Trustor

STATE OF ARIZONA)
County of Pima) ss.

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

Notary Public

My Commission will expire _____

EXHIBIT D - Attachment 1 (to Deed of Trust and Assignment of Rent)

RETURN TO:

Pima County Community and Workforce Development Department
Attn: HOME Program Manager
Pima County Housing Center
801 W Congress St, Tucson, AZ 85745

**PROMISSORY NOTE
PIMA COUNTY HOME PROGRAM
HOMEBUYER DOWN PAYMENT ASSISTANCE LOAN**

Date: _____, 20____
Tucson, Arizona

Principal Amount: \$ _____

Interest Rate: 0%

For value received, _____ (the "Maker"),
whose address at the property for which down payment assistance has been provided is: _____,
_____, (the
"Subject Property"), promises to pay to the order of **Pima County**, a body politic and corporate of the state
of Arizona, through its Community and Workforce Development Department (the "Holder"), in lawful money
of the United States the principal sum of \$ _____, plus interest as specified below on the unpaid principal
balance from time to time outstanding.

**This Promissory Note (the "Note") is secured by a Deed of Trust of even date herewith on certain real
property (the "Subject Property") located in Pima County, Arizona.**

The unpaid principal balance of the Note shall be repaid as described in Paragraph No. 1 below:

DEFINITIONS:

For the purpose of this Note, the following terms shall have the meanings set forth:

"Cash Out" means to remove equity out of the Subject Property, which is an amount of money over and above
the amount owed but less than the current value.

"Exchange" means a transfer or conveyance of title to the Subject Property, or contractual obligation to transfer
or convey such title, in consideration of or in return for receipt of title to, or the right to use, or contractual right
to receive title to, or the right to use, other property, real or personal, having more than nominal or potentially
more than nominal pecuniary value.

"Family Member" means any person who is a parent, child, sibling or spouse of the original Borrower(s). When
the original Borrower(s) transfers, exchanges or devises the Subject Property or any part thereof, to a family

member that qualifies as low-income according to H.U.D. guidelines, that new title holder is a Borrower(s) and becomes subject to all rights, duties, conditions and limitations of an original Borrower(s) thereunder including the restrictions imposed regarding a subsequent sale, transfer, exchange, or devise of the Subject Property.

“Holder” means Pima County a body politic and corporate of the state of Arizona, through its Community and Workforce Development Department.

“HOME Program” means the HUD HOME Investment Partnerships Program delineated in Part 92 of title 24 of the Code of Federal Regulations, as it currently exists and as it may be modified in the future.

“HOME Subsidy” means the amount of federal funding from the HUD HOME Program, provided to the Maker for down payment and/or closing costs. These funds are administered by the Holder, on behalf of the City of Tucson/Pima County HOME Funding Consortium.

“HUD” means the United States Department of Housing and Urban Development.

“Maker” (or ‘Borrower’) means a person(s) who owns an interest in the above described Subject Property as shown by the records of the Pima County Recorder as of the date of this Promissory Note, their family member, personal representatives, heirs and devisees.

“Maker’s Equity” means any appreciation or increase in the appraised market value of the Subject Property realized from the Maker's additional investment, including down payment made from their own funds at time of purchase, the portion of monthly payments applied to principal reduction on the senior mortgage and the nominal value of any property improvements made from the Maker’s funds, as determined by a State certified property appraiser.

“Net proceeds” means the sales price less the balance owed at time of closing to any mortgagee, trustee under deed of trust, contract vendor or assignee, taxing authority or any holder of an encumbrance on or other interest in the Subject Property which encumbrance or interest is superior in right to the rights of the County under this document, and less allowable costs of closing transaction, which shall be limited to real estate agent or broker sales commission, title insurance policy costs, recording fees, appraisal fees and escrow fees.

“Primary Residence” means the home the Maker(s) occupies as their principal place of residence.

“Refinance” means the renewing or replacing of the existing senior mortgage loan or taking out a private second mortgage on the Subject Property by the Maker usually for the purpose of a lower interest rate or to take cash equity out of the property.

“Sale” means a transfer or conveyance of title to the Subject Property, or contractual obligation to transfer or convey such title or the right to use. The consideration for a sale is to be paid by cash or equivalent in part or in whole.

“Subject Property” or “Subsidized Property” means the real property purchased by Maker using, in part, the HOME Subsidy provided by Holder under the conditions of this Note. Maker agrees to maintain Subject Property as Maker’s primary residence for the duration of the Affordability Period specified in this Note.

“Transfer” means any alienation of the Subject Property other than by gift deed or similar instrument to a family member, or by conveyance to anyone, including the right to use.

MAKER AND HOLDER COVENANT AND AGREE AS FOLLOWS:

The Maker agrees to maintain the property as their primary residence for a period of ten (10) years beginning on the date of closing ("the Affordability Period").

1. **Transfer, Sale, Refinance, Exchange, Rent or Lease of Subject Property:** In the event Maker (s) transfers, devises, refinances, sells, exchanges, rents or leases the subject property to anyone other than a family member as defined herein, regardless of the terms or conditions of such transfer, sale, or exchange within the first **ten (10) years**, or fails to maintain the property as their primary residence during the first **ten (10) years**, the Maker(s) will repay to Holder, *the full amount of the HOME Subsidy, which is* \$ _____.
2. *HOME Subsidy repayment shall be made from the net proceeds of the sale, but only to the extent that such proceeds are in excess of the first mortgage pay-off, customary settlement charges and the Maker's Equity.*
3. **Approval of Holder:** Any transfer, refinance, sale or exchange of a Subsidized Property, or any part thereof, other than to or with a family member as defined herein, shall be subject to the prior written approval of the Pima County Community and Workforce Development Department, Affordable Housing & Community Planning Division. Where repayment is required pursuant to the terms of this Security Instrument, the County, upon written request by the escrow firm for the transaction, shall promptly notify the escrow firm of the repayment amount required to be made for all funds described in Section A.
4. So long as Maker is not in default and shall occupy the real property ("Home") which is the subject of the Deed of Trust securing this Note as Maker's principal place of residence, no payments of principal shall be made by Maker to Holder.
 - (a) Any event of default shall occur, and Holder shall elect to declare the principal immediately due and payable. In the event of such default and Holder's election to declare the principal immediately due and payable, Maker shall immediately without demand pay to Holder the principal and all accrued default interest thereon. From and after the date of default and election to accelerate, no further reductions (as set forth in (ii) above) of principal shall be made, unless Maker shall reinstate this Note as may be allowed under the provisions of Arizona law.
 - (b) A voluntary or involuntary sale, conveyance, or alienation of the Home or any part thereof which is of such a nature that Holder are entitled to declare this Note immediately due and payable pursuant to the terms of the Deed of Trust. In any such event, and upon Holder's election, the principal plus any interest accrued, shall be immediately due and payable by Maker without any demand or other act of Holder.
5. **REFINANCE OR HOME EQUITY LOANS:** Maker will be approved for subsequent refinancing or home equity loans, only under the following conditions:
 - a. **REFINANCING:** The Holder will allow their lien to be placed in second or subordinate position to subsequent mortgages **only** if the total loan to value (LTV) does not exceed 90%. Exceptions may be considered to refinance for a rate or term reduction that does not take out additional cash or equity. The Maker must demonstrate that the proposed financial transaction will produce a clear distinct financial benefit. No refinancing will be permitted when cashing out solely for consolidation of credit card or revolving debt for any reasons other than to finance necessary home repairs or improvements. Written, detailed requests to subordinate shall come from both the Maker and lender and must be accompanied by copies of proposed Good Faith Estimate, recent appraisal on Subject Property, copy of preliminary title report. Request must be signed by Maker(s) and Good Faith Estimate must be signed by both the homeowner and an authorized representative of the lending company.
 - b. The County reserves the right to amend this policy at any time. The County may, at its sole discretion, waive or modify this policy if unique or unusual circumstances indicate that it would be in the best interests of the County.

6. Each and every payment made hereunder shall be applied to costs, expenses, fees, and to any accrued interest and the principal amount hereof in such order and in such amounts as Holder shall determine in their sole and absolute discretion. All obligations hereunder (including principal, interest, costs and fees, if any), not paid or discharged when due and payable (or if the Maker shall be in default under any related agreements), shall, at Holders' sole option, bear interest, until paid in full at the rate equal to the highest rate of interest in effect from time to time, under the laws of the State of Arizona, payable on money judgments, but not to exceed 10% per annum.
7. Upon the occurrence of any of the following or any other default by Maker and on the election of Holder, all obligations hereunder shall become immediately due and payable, and all unpaid principal and accrued interest shall be deemed accelerated, without presentment for payment, diligence, grace, exhibition of this Note, protest, further demand or notice of any kind, all of which are hereby expressly waived (and failure to exercise this option shall not constitute a waiver of the right to exercise the option with respect to any subsequent occurrence of the following): (i) Any sum owing hereunder or under the Deed of Trust or other Agreement is not paid as agreed; (ii) There is any default or breach of any representation, warranty, term, provision or covenant by the Maker under his Note, any related agreement, any deed of trust, security agreement, or note whatsoever, whether related to this Note or not, creating obligations of the Maker in favor of the Holder; (iii) The Maker sells, assigns, conveys, or otherwise encumbers the Property at any time within the term of this Note and under the terms of the Deed of Trust such action is not permitted.
8. Time is of the essence of each and every term of this note. This Note can be prepaid in whole or in part at any time without prepayment penalty. This Note shall be governed and construed in accordance with the laws of the State of Arizona, except to the extent that such laws are preempted by Federal law or regulation, in which case such Federal law or regulation shall govern.
9. The Maker hereby agrees: (i) To any and all extensions and renewals hereof, from time to time, without notice, and that no such extension or renewal shall constitute or be deemed a release of any obligation of any of the Makers to Holder hereof; (ii) That the acceptance by Holder hereof of any performance which does not comply strictly with the terms hereof shall not be deemed to be a waiver or bar of any right of said Holder, nor a release of any obligation of the Maker to Holder hereof; (iii) To pay Holder without demand any and all costs, expenses and fees incurred by Holder in enforcing payment of any amounts due hereunder, including reasonable attorney's fees incurred before, after or irrespective of whether, suit is commenced. For purposes of this Note, costs, expenses and fees shall also include, by way of illustration and not of limitation, all attorney's fees, costs and expenses payable under the deed of trust or incurred as a result of a filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, or any similar state or Federal law relating to Bankruptcy, insolvency or receivership. In the event suit is brought to enforce payment hereof, such costs, expenses and fees and all other issues in such suit shall be determined by a court sitting without a jury.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

9. THIS NOTE IS A NON-RECOURSE NOTE, SO THAT IN THE EVENT OF ANY DEFAULT, THE HOLDER'S SOLE REMEDY SHALL BE TO ENFORCE THE DEED OF TRUST AND REALIZE ON THE HOME ITSELF THROUGH JUDICIAL FORECLOSURE, POWER OF SALE OF OTHER LAWFUL MEANS OF ENFORCING AGAINST THE HOME ITSELF. NO DEFICIENCY JUDGMENT SHALL BE TAKEN AGAINST MAKER.

MAKER (TRUSTOR)

MAKER (TRUSTOR)

[illegible]

This instrument was acknowledged before me this _____ day of _____, 20__, by _____ for the purposes therein contained.

NOTARY PUBLIC

My commission Expires: _____

END OF EXHIBIT D (including Attachment 1)

EXHIBIT E

HOMEBUYER SET UP AND COMPLETION FORM – HOME PROGRAM (for single and multi-address activities)

Full document downloadable from HUD EXCHANGE AT:

<https://files.hudexchange.info/resources/documents/HOME-IDIS-HOMEbuyer-Set-Up-And-Completion.pdf>

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

Homebuyer Set Up and Completion Form HOME Program (For single and multi-address activities)

Check the appropriate box: <input type="checkbox"/> Original Submission <input type="checkbox"/> Ownership Transfer		<input type="checkbox"/> Change Owner's Address <input type="checkbox"/> Revision		Name and Phone Number of Person Completing Form:	
Set Up Activity:					
A. General Information.					
1. Name of Participant:		2. IDIS Activity ID Number:		3. Activity Name:	
B. CHDO Questions. (Only if applicable)					
1. Is funding limited to CHDO Operating (CO) or CHDO Capacity Building (CC) (Y/N)? (If Yes, STOP DO NOT FILL OUT THIS FORM.)		2. Will activity be funded with CR (Y/N) If yes, CHDO Acting as (enter code) _____ (1) Owner (2) Sponsor (3) Developer			
3. Will initial funding be a CHDO Site Control and/or Seed Money Loan (Y/N)? (Y/N) _____ (If "Y", answer item 4.)		4. Is the activity going forward? (Y/N): (If "Y", fill out the rest of the form. If "N", only the cost information is needed.)			
C. Objective and Outcome.					
1. Objective (enter code): _____ (1) Create suitable living environment (2) Provide decent affordable housing (3) Create economic opportunities		2. Outcome (enter code): _____ (1) Availability/accessibility (2) Affordability (3) Sustainability			
D. Special Characteristics.					
1. Activity Location Type "Y" next to any that apply (1) _____ CDBG Strategy Area (2) _____ Local target area (3) _____ Presidentially declared major disaster area (4) _____ Historic preservation area (5) _____ Brownfield redevelopment area (6) _____ Conversion of nonresidential to residential use (7) _____ Colonia (For AZ, CA, NM, TX)				2. Will this activity be carried out by a faith-based organization (Y/N)?	
E. Activity Information.					
1. Activity Type (enter code): (2) New Construction Only (4) Acquisition & Rehab (3) Acquisition Only (5) Acquisition & New Construction					
2. Homebuyer's Name (optional):		3. Street:			
4. City:	5. State:	6. Zip Code:	7. County code:	Activity Estimates: 8. HOME Units:	9. HOME Cost:
10. Multi-Address (Y/N)?		11. Loan Guarantee (Y/N)?			
F. Developer. (For multi-address activities only)					
1. Developer Type (Enter code): (1) Individual (4) Not-for-Profit (2) Partnership (5) Publicly Owned (3) Corporation (6) Other		2. Developer's Name:			
		3. Developer's Street Address:			
4. City:		5. State:	6. Zip Code:		

End of Exhibit E

EXHIBIT F

AFFIRMATIVE FAIR HOUSING (AFHM) PLAN – SINGLE FAMILY HOUSING

HUD FORM 935.2B

Full document downloadable at the following HUD website:

<https://www.hud.gov/sites/documents/935-2B.PDF>

Affirmative Fair Housing Marketing (AFHM) Plan - Single Family Housing

U.S. Department of Housing
and Urban Development
Office of Fair Housing and Equal Opportunity

OMB Approval No. 2528-0073
(exp. 12/31/2016)

1a. Applicant's Name, Address (including City, State & Zip code) & Phone Number		1c. Development Number	1d. Number of Units																								
1b. Development's Name, Location (including City, State and Zip code)		1e. Price Range From \$ To \$	1f. Type of Housing <input type="checkbox"/> Development <input type="checkbox"/> Scattered Site																								
2. Type of Affirmative Marketing Area (check all that apply) <input type="checkbox"/> White (non-minority) Area <input type="checkbox"/> Minority Area <input type="checkbox"/> Mixed Area (with _____ % minority residents)		1g. Approximate Starting Dates (mm/dd/yyyy) Advertising Occupancy																									
3. Direction of Marketing Activity (Indicate which group(s) in the housing market area are most likely to apply for the housing because of its location and other factors without special outreach efforts) <input type="checkbox"/> White <input type="checkbox"/> American Indian or Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Persons with Disabilities <input type="checkbox"/> Families with Children <input type="checkbox"/> Other _____ Specify _____ (e.g. specific ethnic group, religion, etc.)		1h. Housing Market Area																									
4a. Marketing Program: Commercial Media (Check the type of media to be used to advertise the availability of this housing) <input type="checkbox"/> Newspapers/Publications <input type="checkbox"/> Radio <input type="checkbox"/> TV <input type="checkbox"/> Billboards <input type="checkbox"/> Other (specify) _____		1i. Census Tract																									
4b. Marketing Program: Brochures, Signs, and HUD's Fair Housing Poster (1) Will brochures, letters or handouts be used to advertise? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes", attach a copy or submit when available. (2) For development site sign, indicate sign size _____" x _____"; Logo type size _____" x _____. Attach a photograph of sign or submit when available. (3) HUD's Fair Housing Poster must be conspicuously displayed wherever sales/rentals are showings take place. Fair Housing Poster will be displayed in the <input type="checkbox"/> Sales Office <input type="checkbox"/> Real Estate Office <input type="checkbox"/> Model Unit <input type="checkbox"/> Other (specify) _____		1j. Sales Agent's Name & Address (including City, State and Zip Code)																									
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">Name of Newspaper, Radio or TV Station</th> <th style="width: 30%;">Direct Descriptions of Readers/Audience</th> <th style="width: 30%;">Semi-Directions of Advertising</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>		Name of Newspaper, Radio or TV Station	Direct Descriptions of Readers/Audience	Semi-Directions of Advertising																							
Name of Newspaper, Radio or TV Station	Direct Descriptions of Readers/Audience	Semi-Directions of Advertising																									

Previous editions are obsolete

Page 1 of 3

ml. Handbook 802.9.

Form HUD-935.2B (7/2006)

END OF EXHIBIT F