

HOME/HOME-ARP Development Loan Agreement

Magnolia Gardens

This HOME and HOME-ARP Development Loan Agreement (“Agreement”) is made and entered into this _____ day of _____, 2025, by and between the City of Yuma (“City”), an Arizona municipal corporation, on behalf of the Yuma County HOME Consortium (“YCHC”), and Arizona Housing Development Corporation (AHDC) (the “Borrower”), an Arizona non-profit corporation. The City and Borrower agree as follows:

1 DEFINITIONS

As used herein, the below words and phrases, wherever used in this Agreement, shall be construed as defined in this Section unless, from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- 1.1 “Affordability Period” shall mean the twenty (20) year period that the HOME-Assisted Units and HOME-ARP Assisted Units must remain affordable in compliance with 24 CFR 92.252. The Affordability Period for both the HOME-Assisted Units and the HOME-ARP Assisted Units will begin on the completion date in the Certificate of Completion and will end twenty (20) years from that date.
- 1.2 “Agreement” shall mean this Agreement.
- 1.3 “Architect” shall mean the Project architect Thompson Design Architects, an Arizona corporation.
- 1.4 “AHDC” means the Arizona Housing Development Corporation, an Arizona non-profit corporation and the legal entity that is responsible for and owns the Project with whom this Agreement is made.

- 1.5 “Certificate of Occupancy” shall mean the official certification issued by the City upon completion of the construction confirming the residential units are ready for occupancy.
- 1.6 “Closing Costs” shall have the same meaning as defined by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.* and shall mean those eligible ordinary and typical costs identified on the Settlement Statement (HUD-1) and payable to third parties associated with a real property transaction or costs associated with the development of the Project, limited to the following: surveys, title insurance, costs of appraisals, credit reporting, recording costs, holdings costs, prepaid condominium fees, if any, and initial property and mortgage insurance premiums, but shall not include any payment of principal on a loan, any taxes or any costs exceeding industry standard costs for the goods or services, relocation costs.
- 1.7 “Collateral” shall mean all assets pledged as security by AHDC and secured by the City’s Deed of Trust.
- 1.8 “Construction Contract” shall mean the guaranteed maximum price construction contract between AHDC and Contractor which must require that the final five percent (5%) of the total amount due the Contractor pursuant to the construction contract shall not be disbursed prior to 100% construction completion and separate written Certificate of Completion by the City.
- 1.9 “Construction Loan” shall mean the loan to be made by Foothills Bank to AHDC in the sum of \$1,045,000.00 to be used to finance the construction of the Project, which is secured by a first priority mortgage lien against the Property.
- 1.10 “Construction Loan Commitment” shall mean Foothills Bank’s written commitment (*which may be subject to certain conditions*) from Foothills Bank to make a Construction Loan.
- 1.11 “Contractor” shall mean Pilkington Construction, an Arizona corporation, the general contractor of the Project pursuant to the Construction Contract.
- 1.12 “Certificate of Completion” shall refer to attachment 13.
- 1.13 “Declarations” shall mean the Declaration of Affirmative Land Use Restriction Covenants for HOME-Assisted and HOME-ARP Assisted Property that will serve as the affordability and qualified population compliance lien used to restrict the

Project. The Declarations will be placed on the Property for a period of twenty (20) years from the date of the Certification of Completion. (see *Attachment No. 7*)

- 1.14 “Deed of Trust” means the instrument executed by AHDC, as the trustor, for the benefit of the City which secures payment of the Loan and compliance with the loan terms. (see *Attachment No. 9*)
- 1.15 “Development Budget” shall mean the Total Development Cost Budget and includes both the construction costs (*hard cost*) as well as all project soft cost summarized in Attachment 5.
- 1.16 “Event of Default” shall mean those events outlined in Section 3 and/or otherwise specifically stated as an Event of Default in this Agreement.
- 1.17 “HOME-Assisted Units” shall have the same meaning as used in 24 CFR 92.252 and shall mean the two (2) floating units at the Project assisted with HOME Program funds. The HOME-Assisted Units are further described in Section 7.21.1.
- 1.18 “HOME-ARP Assisted Units” shall have the same meaning as used in HUD Notice CPD-21-10, Requirements for the Use of HOME-ARP and shall mean the eight (8) floating units at the Project assisted with HOME-ARP Program funds. The HOME-ARP Assisted Units are further described in Section 7.1.
- 1.19 “Foothills Bank” shall mean Foothills Bank, the Construction Loan lender and the Permanent Loan lender.
- 1.20 “Laws” shall mean all ordinances, statutes, rules, regulations, orders, injunctions, writs or decrees of any government or political subdivision or agency or authority thereof (including, without limitation, the State of Arizona and the City of Yuma) or of any court or similar entity having jurisdiction over AHDC or the Project.
- 1.21 “Loan” shall mean the loan of up to a total of two million, nine hundred and one thousand, three hundred and ninety-four dollars and sixty cents (\$2,901,394.60) to be made by the City to AHDC for work on the project. The loan, guaranteed by AHDC subject to the terms identified in Section 3 of this Agreement, consists of: (a) up to \$124,935.00 of HOME funding from Fiscal Year 2021/2022; (b) up to \$99,586.34 from Fiscal Year 2022/2023 HOME funds; (c) up to \$322,438.66 from Fiscal Year 2023/2024 HOME funds; up to \$33,326.00 from Fiscal Year 2024/2025 HOME funds; and up to \$2,321,108.60 of 2021/2022 in HOME-ARP funds. The loan

is to be used for the construction and development of the project pursuant to this Agreement.

- 1.22 “Loan Documents” shall mean this Agreement, the Notes, the Deed of Trust, the Declarations, and any and all other documents now or hereafter executed by AHDC or any other person or party to evidence or secure the payment of the Loan or the performance and discharge of the obligations of AHDC and all amendments, modifications, and supplements thereto. The terms of the Notes, Deed of Trust, and Declarations are more fully set forth in *Attachments No. 7 - 9*.
- 1.23 “Notes” shall mean collectively, subject to the requirements of Section 3: (a) a promissory note in the original principal amount of \$2,901,394.60 of even date herewith executed by AHDC, payable to the order of the City and all renewals, amendments, reinstatements, rearrangements, enlargements, modifications or extensions of the Notes or of any other promissory note or notes given in substitution thereof. (see *Attachment No. 8*)
- 1.24 “Permanent Loan” shall mean a permanent loan in the amount of \$1,045,000 from Foothills Bank.
- 1.25 “Permitted Encumbrances” shall mean: (i) the lien of the deed of trust against the Project securing the Construction Loan and Permanent Loan; (ii) the Deed of Trust against the Project securing the Loan; (iii) a Deed of Trust, Assignment of Rents and Security Agreement for a loan of \$308,908 from AHDC (“Sponsor Loan”); (iv) the Declarations to ensure program long term affordability required for the Loan; (v) liens for taxes, assessments or similar charges incurred in the ordinary course of business that are not yet due and payable; (vi) all liens and other encumbrances approved by the City in writing. The order of Permitted Encumbrances set forth in this Subsection 1.24 does not reflect the order of priority for the Permitted Encumbrances; such priority will be established by a subordination agreement and/or the Deed of Trust, as further set forth in the Title Policy.
- 1.26 “Plans and Specifications” shall mean those plans and specifications prepared by the Architect and approved by AHDC, Contractor and the City for the construction of the Project and all amendments and modifications thereof.
- 1.27 “Project” means the land, building, fixtures, furnishings and all improvements for, on and in the multi-family residential buildings and land located at 430 S. Magnolia Avenue, Yuma, Arizona 85364 (as more fully described in *Attachment No. 2 and*

6). AHDC owns the Property on which Magnolia Gardens will be located and will serve as the developer of the Project in accordance with HUD requirements.

- 1.28 “Project Schedule” shall mean that critical path schedule identifying project milestones from planning, construction and project completion (*Attachment No. 3*).
- 1.29 “Site” means a parcel or portion of a parcel of land on which the Project is intended to be developed or rehabilitated as described in AHDC’s HOME and HOME-ARP funding application(s).
- 1.30 “Sources and Uses of Funds Budget” shall mean the sources of funding described in the Scope of Development, Attachment 6, and the Development Budget as more fully set forth in *Attachment No. 5*.
- 1.31 “Title Company” shall mean Security Title Agency, the title company that will issue City’s Lender’s ALTA 2006 title policy for the project.
- 1.32 “Title Policy” shall mean an ALTA 2006 Form B mortgagee’s title insurance policy in the amount of the Loan and in favor of the City and which is in all respects satisfactory to the City ensuring that the City has a second priority deed of trust on the Project subject only to the Permitted Encumbrances.
- 1.33 “Work” shall mean that scope of work as identified in Attachment 5 of this Agreement and detailed in the architectural construction plans and specifications for the Project.

2 SUBJECT OF AGREEMENT

2.1 Agreement Pursuant to Federal HOME Program

The YCHC is a recipient of HOME Investment Partnerships Program (HOME) funds from the Department of Housing and Urban Development (HUD) as a participating jurisdiction for program years 2021 through 2024. The City acts on behalf YCHC.

The HOME Program requires a minimum of fifteen (15%) percent of the HOME allocation is to be set aside annually for use by eligible Community Housing Development Organizations for the development of affordable housing. AHDC has met all HUD-established requirements pertaining to its legal status, organizational structure, capacity, and experience for CHDO designation described in *Attachment 1*.

AHDC shall act as owner and developer of the Project described herein and will utilize HOME Funds as defined below to construct 16 rental housing units; two (2) of which will be designated as HOME units and rented to, and occupied by, income eligible individuals and families.

As a recipient of federal funds, the City, on behalf of YCHC, may loan or grant money to eligible borrowers to provide housing for low-income individuals or families. This Agreement is made pursuant to the HOME Program and the Borrower must comply with all rules and regulations under the HOME Program, as well as all land use regulations, codes, and laws affecting acquisition, ownership, use, improvement, or development of the Property (hereinafter defined), and the vacation or abandonment of public rights-of-way and easements. Nothing in this Agreement constitutes an exemption or grant of a variance from applicable codes and laws.

2.2 Agreement Pursuant to Federal HOME-ARP Program

The YCHC is a recipient of HOME American Rescue Plan Program (“HOME-ARP”) funds, which are administered by the HUD, pursuant to 42 U.S.C. §§ 3535(d) and 12701 through 12839 and 24 CFR. Part 92 (the “HOME Program Requirements”) (quoted terms, when not otherwise defined herein, have the meanings assigned by HUD, the HOME-ARP Program requirements, and their associated laws and regulations). Under the HOME-ARP Program, HUD allocated federal funds to the City, to provide affordable housing to Qualified Populations (QP). The term “Qualified Populations” refers to individuals or families that are (1) Homeless, as defined in 24 CFR 91.5; (2) At risk of homelessness, as defined in 24 CFR 91.5; (3) Fleeing, or attempting to flee, domestic violence, sexual assault, stalking, or human trafficking, as defined by HUD; and (4) Other populations. Eight (8) of the units will be designated as HOME-ARP units and rented to, and occupied by, Qualified Populations.

As a recipient of HOME-ARP, the YCHC acts through the City which may loan or grant money to eligible borrowers to provide housing for QP and low-income individuals or families. This Agreement is made pursuant to the HOME-ARP Program and any such borrower must comply with all rules and regulations under the HOME-ARP, as well as all land use regulations, codes, and laws affecting acquisition, ownership, use, improvement, or development of the Property (hereinafter defined), and the vacation or abandonment of public rights-of-way and easements. Nothing in this Agreement constitutes an exemption or grant of a variance from applicable codes and laws.

2.3 The Property, the Project, and Funding Sources

2.3.1 Property

The Borrower will construct sixteen (16) rental housing units in two residential buildings. The project is located at 430 S. Magnolia Avenue, in the City of Yuma, Arizona (the "Project"). The location of the Property is shown on the "Site Map" attached as *Attachment No. 4*. "Property" means the real property described in the "Legal Description," attached as *Attachment No. 2*, and all present and future improvements located thereon.

2.3.2 Loan and Project

Subject to the terms and conditions of this Agreement, the City will extend to Borrower a loan (as described in *Section 3.1* hereof, the "Loan"), which Borrower will use toward the development of the affordable housing complex. Borrower must complete each milestone of the Project by no later than required in the schedule of performance *Attachment No. 3* (the "Schedule of Performance"), and Borrower must deliver each phase of the Project having no less than the attributes required by *Attachment No. 6* (the "Scope of Development"). Borrower will operate the Project and Property in accordance with this Agreement, and the units therein shall be designated as required by this Agreement.

2.3.3 Funding Sources

Borrower will construct the Project with the following funding sources: (i) a construction loan in the approximate original principal amount of \$1,045,000 to Borrower by Foothills Bank, (the "Construction Loan" or "Approved Loan"); (ii) a loan from the City through the HOME Program in the amount of \$580,286; (iii) the HOME-ARP Loan in the amount of \$2,321,108.60; and (iv) AHDC investment in the amount of \$380,908.

2.4 Parties to the Agreement

2.4.1 City

The City is a municipal corporation of the State of Arizona, a public body corporate, which is organized and existing under the laws of the State of Arizona. The principal office of the City is located at One City Plaza, Yuma, Arizona 85364. For purposes of this Agreement, the City of Yuma acts on behalf of the Yuma County HOME Consortium, which is comprised of Yuma County, the Cities of San Luis, Somerton, and Yuma, and the Town of Wellton, Arizona.

2.4.2 Borrower

Borrower is a 501 (c) 3 non-profit corporation, organized and existing under the laws of the federal government and the state of Arizona. The principal office of Borrower is located at 420 South Madison Avenue, Yuma, Arizona. The term “Borrower” includes any of Borrower’s successors and permitted assigns which have assumed the obligations of Borrower under this Agreement and any other Loan Document (as defined in *Section 3.3* hereof) with the prior written consent of the City.

2.4.3 No assignment

City and Borrower agree that Borrower is uniquely qualified to perform the obligations imposed by this Agreement, and, therefore, this Agreement may not be assigned by Borrower without the prior written consent of the City.

2.5 Eligible Borrower

Borrower represents and warrants to the City that: it is eligible under the HOME Program to receive the Loan; Borrower is a non-profit corporation that will construct, own, and operate the Project; and Borrower is eligible for set-aside HOME CHDO funds. The City of Yuma certified the Borrower as a new CHDO for the Magnolia Gardens Project on January 24, 2025.

2.6 Independent Contractor

Borrower is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement. Borrower and the City are not and will not be considered as joint venturers, partners, or agents of each other. Borrower’s employees, agents and subcontractors will not be considered officers, employees, agents or subcontractors of the City. Both the City and Borrower agree not to represent to anyone that one is the agent of the other or has authority to act on behalf of the other.

3 AMOUNT AND GENERAL TERMS OF THE LOANS

3.1 The Loan

Borrower will borrow funds from the City and, subject to strict and full compliance with the terms and conditions hereof, and in reliance upon the representations and warranties set forth herein, the City agrees to make the Loan to and for the benefit of Borrower in the amount of \$2,901,394.60 in HOME and HOME-ARP funds (the “Loan”) as follows.

3.1.1 Development Budget

Borrower will use the loan to construct the project, in accordance with the *Attachment No. 6* Scope of Development and the Development Budget attached as *Attachment No. 5* dated March 10, 2025.

3.1.2 Note

The loan will be offered as a forgivable Deferred Payment Loan (DPL) at zero percent (0%) interest for a 20-year period. The Borrower must sign a Promissory Note and Deed of Trust, equal to the amount of the Loan. The security instruments will enforce the provisions of this policy and direct any recaptured HOME or HOME-ARP funds back to the City. During the period of affordability, the security instruments will require repayment of the Loan upon: (i) transfer or sale of the property; and (ii) noncompliance with HOME and HOME-ARP requirements. A promissory note in the form of *Attachment No. 8* will evidence borrower's indebtedness and obligation to repay the Loan. The Note will promise payment of an amount up to \$2,901,394.60.

3.1.3 Term

The Loan will have a term of 20 years from the date the Certificate of Completion is recorded.

3.1.4 Annual Project Cash Flow Analysis Report

Borrower shall prepare and deliver to City a cash flow analysis report (the "Annual Project Cash Flow Analysis Report"), showing the sources and uses of all Project funds. The Annual Project Cash Flow Analysis Report shall be for the preceding calendar year (that is, the preceding year beginning in January and ending in December). The Annual Project Cash Flow Analysis Report shall be certified as correct by Borrower.

3.1.5 Acceleration

The Loan shall become due and payable upon the transfer of the Property in violation of *Section 5.4.2* hereof.

3.1.6 Event of Default

Upon the occurrence of an Event of Default under this Agreement or the other Loan Documents, the failure of the Property to pass the inspection for compliance as required by this Agreement, the failure of Borrower to submit the Annual Reports on or before the due dates as required by this Agreement, or disapproval of the Annual Reports by the City pursuant to the terms of this Agreement, the full amount of HOME and HOME-ARP funds loaned shall be immediately due and payable.

3.2 Collateral

Borrower's performance under the Loan Documents, including all extensions, renewals or replacements thereof, will be secured by the following described collateral (collectively, the "Collateral"):

3.2.1 Real Property

Borrower will execute and deliver a deed of trust in favor of the City describing the Property and securing Borrower's obligations under the Note and the other Loan Documents (the "Deed of Trust"). The Deed of Trust will be in the form of *Attachment No. 9*. At the time of recording, the Deed of Trust will give the City a second-priority lien position against the Property, and all improvements now or hereafter located on the Property, subject only to the lien securing the Construction Loan, or Permanent Loan, and such other matters as may be specifically approved by the City in writing by an appropriate instrument.

3.2.2 Other Documents as Needed

Borrower will execute (or cause to be executed) and deliver to the City such other documents or instruments as the City may reasonably require in connection with the Loan or either of the HOME Programs.

3.3 Loan Documents

This Agreement, the Declaration (as defined herein), the Note, the Deed of Trust, the Financing Statements, and any other documents or instruments required by the City in connection with the Loan are collectively the "Loan Documents."

3.4 Financing

Borrower will apply for and obtain funding for the Project from the funding sources outlined in *Section 2.3.3* hereof. Borrower hereby attests that the amounts of these funding sources will be sufficient for completion of the Project and will be used for completion of the Project, payment of developer fee and other costs associated with the Project.

3.5 Legal Limits

3.5.1 Agreement to rates

Borrower agrees to effective rates of interest for the Loan, which is the rate stated in *Section 3.1.2* hereof plus any additional rates of interest resulting from any other payments in the nature of interest, including, without limitation, any late charges to the extent that such charges may be deemed includable in interest for any purpose.

3.5.2 No usury

All agreements between Borrower and the City are hereby expressly limited so that in no event whatsoever, whether by reason of deferment in accordance with this Agreement or under any agreement, or by virtue of acceleration or maturity of the Loan, or otherwise, will the amount paid or agreed to be paid to the City for the loan, use, forbearance or detention of the Loan or to compensate the City for damages suffered by reason of a late payment or default under this Agreement, exceed the maximum permissible under applicable law. If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any provision in the security for this Agreement, at the time performance of such provision is due, involves exceeding the limit prescribed by law, ipso facto the obligations to be fulfilled will be reduced to the limit of such validity. This provision will never be superseded or waived and will control every other provision of all agreements between Borrower and the City.

3.6 Borrower's Exculpation

3.6.1 Personal liability generally limited

Subject to the provisions of this *Section 3.6* and notwithstanding any other provision in the Note, the personal liability of Borrower, and of any officers, partners or member of Borrower and of any other person or entity, including Borrower's partners, to pay the principal of and interest on the Borrower's debts evidenced by the Note and any other agreement evidencing Borrower's obligations under the Note or the other Loan Documents shall be limited to (1) the Collateral, and (2) the rents, profits, issues, products and income of the Project, including any received or collected by or on behalf of Borrower after an Event of Default and not applied to the payment of principal and interest due under the Note or any Approved loan or payment of utilities, taxes and assessments, insurance premiums and ground rents, if any, on the Project and other reasonable and customary operating expenses of the Project (but not including any fees or other payments of any kind or nature made to Borrower or any affiliate or related entity of Borrower, except for an asset management fee and/or property management fee paid to any affiliate for management services not in excess of 6% of gross rents actually received for the Project) as they become due and payable, except to the extent that Borrower did not have the legal right, because of a bankruptcy, receivership, or similar judicial proceeding, to direct the disbursement of such sums.

3.6.2 No pursuit

Except as provided in this *Section 3.6*, the City shall not seek (1) any judgment for a deficiency against Borrower, any officer or member of Borrower, or Borrower's heirs, legal representatives, successors or assigns, or the heirs, legal representatives, successors or assigns of any member of Borrower, or any other person or entity, in any action to enforce any right or remedy under the Loan Documents or (2) any judgment on the Note, except as may be necessary in any action brought under the Loan Documents to enforce the lien against the Project.

3.6.3 When liable

Except as provided in this *Section 3.6*, Borrower shall be personally liable in the amount of any loss, damage, or cost to the City resulting from:

3.6.3.1 Fraud

Fraud or intentional (knowing or purposeful) misrepresentation by Borrower in connection with obtaining the Loan evidenced by the Note;

3.6.3.2 Payments

Insurance proceeds, condemnation awards, or other sums or payments attributable to the Project not applied in accordance with the provisions of the Loan Documents, except to the extent that Borrower did not have the legal right, because of a bankruptcy, receivership or similar judicial proceeding, to direct disbursement of such sums or payments;

3.6.3.3 Rents, et al.

All rents, profits, issues, products, and income of the Project received or collected by or on behalf of Borrower following any Event of Default under the Loan Documents and not applied to payment of principal and interest due under the Note and payments of utilities, taxes and assessments, insurance, ground rents, and liens attaching by operation of law, if any, on the Project, and other reasonable and customary operating expenses of the Project (but not including any fees or other payments of any kind or nature made to Borrower or any affiliate or related entity of Borrower except for a management fee paid to any affiliate for management services not in excess of \$50 per unit per month (increasing annually by 3%); and not including liens of affiliate of Borrower or security instruments of lenders to Borrower, except as allowed by a separate Subordination Agreement between the City

and such secured party) as they become due or payable, except to the extent that Borrower did not have the legal right, because of a bankruptcy, receivership, or similar judicial proceeding, to direct the disbursement of such sums;

3.6.3.4 Breach

A breach of any environmental representation, obligation, or warranty made or undertaken by Borrower in the Loan Documents or any other document executed by Borrower in connection with the Loan evidenced by the Note;

3.6.3.5 Repair

Amounts necessary to repair or replace any damage caused by the willful or wanton act or omission of Borrower;

3.6.3.6 Transaction costs

Borrower's failure to pay transfer fees and charges (if any) due the City under the Note or the Loan Documents in connection with any transfer of all or any part of the Project, or any interest therein, from Borrower to Borrower's transferee, or transfer of beneficial interest in Borrower (if Borrower is not a natural person or persons but is a corporation, partnership, trust or other legal entity);

3.6.3.7 Tenant security deposits

Security deposits paid by tenants improperly retained by Borrower; or

3.6.3.8 Default penalties

Sums then due and thereafter to become due to the City under *Section 8* hereof.

3.6.4 Noninterference

No provision of this *Section 3.6* shall (1) affect any guaranty or similar agreement executed in connection with debt evidenced by the Note, (2) release or reduce the debt evidenced by the Note, or (3) impair the lien of the Deed of Trust.

4 CONSTRUCTION

4.1 Escrow and Escrow Instructions

Borrower has caused escrow 74803517 to be opened (the "Escrow") with the escrow department of Pioneer Title Agency, Inc., an Arizona corporation (the "Escrow Agent"), whose address is 350 W 16th Street, Site 116. Yuma, AZ 85364,

to close the loans in connection with the Property. This Agreement will serve as the instructions of Borrower and the City to the Escrow Agent, which instructions will not be revised, extended, or supplemented without the mutual written consent of the parties and the written acceptance of the Escrow Agent. A duplicate of this Agreement will be delivered to the Escrow Agent by Borrower, and the Escrow Agent hereby is empowered to act under this Agreement to carry out its duties as set forth herein. These duties together with their terms and conditions are set forth below:

4.1.1 Loan Documents

Borrower will deliver the Loan Documents to the Escrow Agent as required by *Section 6.13* hereof, and will deposit or cause to be deposited in the Escrow any funds necessary to pay the escrow fees, the recording fees, the cost of the Title Policy described in *Section 6.2* hereof and any other fees necessary to complete the Scope of Development, to the extent any such fees and costs are not to be funded with the Loan.

4.1.2 Declaration

Borrower will execute and deliver to the Escrow Agent a copy of the fully executed Declaration of Affirmative Land Use Restrictive Covenants for HOME and HOME-ARP Loan in the form of *Attachment No. 7* (the "Declaration"), which will require that Borrower utilize the Property in compliance with this Agreement and the affordability requirements set forth in 24 CFR 92.252 (the "Affordability Requirements"). The City will be an intended beneficiary of the restrictive covenants in the Declaration and have the right to enforce them.

4.1.3 Escrow Agent action

When the Escrow Agent is able to record the Declaration, the Deed of Trust, and a Financing Statement in the Office of the Yuma County Recorder, file a Financing Statement in the Office of the Arizona Secretary of State, and issue the Title Policy, provided that no Event of Default has occurred or remains uncured, the Escrow Agent is authorized to and will:

- A. Record the Declaration, Financing Statement and the Deed of Trust in the Office of the Yuma County Recorder;
- B. File a Financing Statement in the Office of the Arizona Secretary of State;
- C. Cause the Title Policy to be issued in the form described in *Section 6.2* hereof and delivered to the City;

- D. Deliver the original recorded Declaration, Deed of Trust, and Financing Statement to the City, together with the other original fully executed Loan Documents and a copy of the final audited settlement statement;
- E. Collect, and charge Borrower, for any fees, charges, and costs payable by Borrower under this *Section 4.1*; and
- F. Deliver conformed copies of the recorded Declaration, Deed of Trust, and Financing Statement to the City.

4.1.4 Use Notice addresses

All communications from the Escrow Agent to the City, the Borrower, or the Lender will be directed to the addresses and in the manner established in *Section 9.7* hereof for notices, demands, and communications between the City and the Borrower.

4.1.5 Escrow Agent liability

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon the Escrow Agent under this *Section 4.1*.

4.1.6 No fees to City

The City shall not be liable for any fees or expenses which may arise in connection with this transaction, including, without limitation, escrow fees, title insurance premiums, real estate commissions, and brokerage fees.

4.2 Disbursement of Loan

4.2.1 Request for Disbursement Schedule

Provided Borrower has satisfied the conditions precedent set forth in *Section 6*, hereof and is otherwise in full compliance with the terms and conditions of this Agreement, Borrower will be entitled to request disbursements from the Loan on a monthly basis (up to the amount of the Loan in the aggregate) for the cost items (each a “Cost Item”) reflected in the Development Budget; and if approved by the City, the City will be obligated to disburse the requested Loan amount within 30 calendar days, in form and substance acceptable to the City, in accordance with the terms and conditions in this section. AHDC may not request disbursement of Loan funds until the funds are needed for a payment of eligible costs; the amount of each request must be limited to the amount needed. The City will only reimburse for work performed and materials installed and in place on the Project.

4.2.1.1 Request for Disbursement

To receive payment, AHDC must submit to the City a reimbursement request in a form acceptable to the City, with supporting documentation. Supporting documentation for all Requests for Disbursement must include the AIA document G702, Application for Payment form signed by AHDC setting forth such details concerning the status of the Project as the City may require, including the amounts expended for construction to the date of said Request for Disbursement, and the amounts then due and unpaid on account of such construction. Soft costs may be requested if they were incurred not more than 24 months before the date of this Loan Agreement and the Cost Item is reflected in the Development Budget.

4.2.1.2 Supporting Documents

Requests must include the AIA Document G702 (or other form acceptable to the City) signed by AHDC as well as supporting invoices, payment receipts, lien waivers, building permits, Inspection Approval Progress Report certified by project architect, and such certifications by Borrower evidencing the reasonableness and appropriateness of the costs of the Project (collectively, the “Supporting Documents”).

4.2.1.3 Statutory liens

Satisfactory evidence that the applicable lien periods have expired or, in lieu thereof, that Borrower has received lien waivers or releases from all contractors, subcontractors, laborers and materialmen, and that any materialmen’s or mechanic’s liens that may have been recorded have either been paid in full or Borrower has posted an appropriate surety bond to discharge the same.

4.2.1.4 Disbursement

The City may but has no duty to inspect the work completed that is the subject of a Request for Disbursement or cause an inspection of the work completed to be conducted by a qualified architect or engineer of the City’s selection, to verify the statements contained in the Request for Disbursement and Supporting Documents. After receipt of the required documents and completion of any inspection by or caused by the City, the City will compute the difference between the percentage of completion for each Cost Item approved by the City at the time of the current Request for

Disbursement and the percentage of completion for each Cost Item approved by the City at the time of the immediately preceding approved Request for Disbursement, and will disburse an amount equal to 90% of the product of the percentage difference for each Cost Item and the total projected cost for each such Cost Item.

4.2.2 Closeout Disbursement

The remaining 10% of the Loan will be disbursed upon delivery by Borrower of each of the following to the City, in form and substance acceptable to the City, in accordance with the following terms and conditions:

- A. A written request for disbursement, in form and substance satisfactory to City, setting forth such details concerning completion of the Project as the City may require, including the amounts expended to complete the Project.
- B. A written certificate and warranty, in form and substance satisfactory to City, signed by Borrower, certifying that the Project has been “substantially completed” in accordance with the Scope of Development and Plans. For purposes of this Agreement, “substantially completed” means that the development required by the Scope of Development and the Plans is so substantially complete that it satisfies the City of Yuma Minimum Property Standards (as defined in *Section 4.3.8* hereof), all applicable building, plumbing and electrical codes, construction standards, environmental regulations and zoning ordinances, and all other requirements of the City of Yuma and any other governmental authorities have been satisfied, including all inspections required by those authorities, and is ready to be occupied by tenants in accordance with this Agreement, all as determined by the City.

4.2.2.1 Governmental Licenses and Permits

A written certificate and warranty, in form and substance satisfactory to City, signed by Borrower certifying that there are no liens of any kind filed against Borrower, the Property or any portion of the Property, that all governmental licenses and permits required for the Property as completed have been obtained and will be exhibited to the City upon request, and that no Event of Default (as defined in *Section 8.1* hereof) has occurred or is

continuing, and no event has occurred that with notice or lapse of time or both would constitute an Event of Default.

4.2.2.2 Title insurance endorsements

Satisfactory title insurance endorsements from the title company issuing the Title Policy showing the Deed of Trust to be a valid and enforceable lien or charge upon the Property, subject only to those exceptions approved by the City.

4.2.2.3 Supporting documents

Satisfactory supporting invoices, payment receipts and such other certifications by Borrower, evidencing the reasonableness and appropriateness of the costs of developing the Project, as the City may request.

4.2.2.4 Statutory liens

Satisfactory evidence that the applicable lien periods have expired or, in lieu thereof, that Borrower has received lien waivers or releases from all contractors, subcontractors, laborers and materialmen, and that any materialmen's or mechanic's liens that may have been recorded have either been paid in full or Borrower has posted an appropriate surety bond to discharge the same. The City agrees to inspect the Property or cause an inspection of the Property to be conducted by a qualified representative of the City, to verify the statements contained in the disbursement request and supporting documents within 10 business days after the City's receipt of a request for disbursement and receipt of the required documents and title insurance clearance.

4.2.3 No disbursement if off budget

If at any time it appears to the City that the undisbursed portion of the Loan and other sources of funds for construction as described in *Section 2.3.3* hereof are insufficient to pay for the completion of the Project in accordance with the Scope of Development and the Plans and to pay for any other costs and expenses contemplated hereunder, the City will not be required to make further disbursements hereunder unless and until within 5 business days of delivery of notice from the City to Borrower of such deficit, Borrower deposits with the City or the construction lender, in cash or instruments satisfactory to the City, the amount the City deems necessary to cure the deficit.

4.2.4 Revised budget

Notwithstanding the foregoing, Borrower will be permitted to submit a revised budget to the City after the date of this Agreement, and if approved by the City Administrator, such revised budget will be substituted for *Attachment No. 5* dated March 10, 2025, and be deemed to be the budget for purposes of this Agreement.

4.3 Construction Contract Requirements

4.3.1 Construction Contract

All construction contracts entered into by Borrower for the Project (each a "Construction Contract") will require that the Project be commenced, executed and completed within the time limits set forth in *Section 7.8* hereof and in the Schedule of Performance.

4.3.2 Contractors

Each Construction Contract will require the general contractor (the "General Contractor") or the Borrower to obtain adequate builder's all-risk, fire and general liability insurance coverage, from an insurance company and in amounts satisfactory to Borrower and the City, to ensure the completion of the Project and to prevent the City or Borrower from incurring any liability for claims arising from the construction or development of the Property pursuant to this Agreement. Said insurance will be in addition to, and will not take the place of, the coverage and indemnification pursuant to *Section 7.9 hereof*. Borrower will obtain and furnish the City with verification that insurance pursuant to this *Section 4.3.2* has been obtained by the General Contractor prior to the commencement of construction of the Property. Each such Construction Contract shall require the General Contractor to furnish a bond or bonds covering the Contractor's faithful performance and completion and the payment of all obligations arising thereunder in such form as may be approved by the City and with such insurance company or other surety as City may approve, which approval will not be unreasonably withheld.

4.3.3 Contracts

Borrower will provide the City with photocopies of each of the Construction Contracts, any amendments or substitutes approved by the City, all bonds, and any and all other contracts executed pursuant to this Agreement.

4.3.4 Retention

The Construction Contracts and any other contract for construction or development executed pursuant to this Agreement will provide for a retention by Borrower of 10% of the contract amount, except as provided in the Standard Form of Agreement between Owner and Contractor where the basis of payment is a Stipulated Sum, between AHDC (Owner) and Pilkington Construction Company (Contractor), dated March 18, 2025, until the requirements of *Section 4.2.2* hereof have been satisfied.

4.3.5 Equal Employment Opportunity

All contracts executed in connection with development of the Site (including all agreements with subcontractors) will comply with *Section 7.11* hereof.

4.3.6 Section 3

Borrower shall include the following in its contract with the General Contractor (referred to as contractor in this section) and ensure that the General Contractor includes the same in all subcontracts:

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

The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

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

name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.

The contractor will certify that any vacant employment positions, including training positions, that are filled: 1) after the contractor is selected but before the contract is executed; and 2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.

Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.

4.3.7 Minority Businesses, Women's Business Enterprises and Disadvantaged Business Enterprises

Pursuant to 2 CFR § 200.321, Borrower will make a good faith effort by demonstrating affirmative steps to encourage contracting with small minority and women owned business enterprises, and Disadvantaged Business Enterprises when possible as sources of supplies, equipment, construction, and services.

Borrower will use the services and assistance of the Small Business Administration and the Arizona Minority Business Development Agency as required.

4.3.8 Minimum Property Standards

The Property developed hereunder must meet the HUD minimum property standards as defined under HOME, as well as all applicable City of Yuma building, plumbing and electrical codes, construction standards, environmental regulations, zoning, HUD minimum property standards, and other ordinances.

5 REPRESENTATIONS, WARRANTIES, AND COVENANTS REGARDING THE PROPERTY AND BORROWER

5.1 Title

To induce the City to make the Loan, Borrower represents, warrants, and covenants to the City as follows:

A. Possession of Title

Funds will not be disbursed until the Borrower has taken title to and possession of the Property. On the date of the equity closing, which is to include the possession of title in accordance with Section 5.2, Borrower will record a Declaration, which will require that Borrower utilize the Property in compliance with *Section 7.15* hereof and the Affordability Requirements. The City will be an intended beneficiary of the restrictive covenants set forth in the Declaration and have the right to enforce any restrictive covenant set forth in the recorded Declaration. This Agreement, including the Affordability Requirements, will be void in its entirety if Borrower does not obtain possession of title to the Property.

B. Condition of Title

Borrower will have on the date of the equity closing, good and marketable fee simple title to the Property free and clear of all liens, charges, claims, options, encumbrances, and other matters except for such other matters as may be affirmatively approved in writing by the City.

5.2 Loan Commitments; Commencement and Completion of Development

5.2.1 Evidence of funding

Prior to the closing of the Loan and on or before the dates set forth in the Schedule of Performance, Borrower will provide the City with evidence, satisfactory to the City in its reasonable discretion, that Borrower has received unconditional commitments for, or has received, funds from the funding sources as described in *Section 2.3.3* hereof.

5.2.2 Schedule of Performance

Borrower will complete work on the Project in accordance with the respective dates set forth in the Schedule of Performance, *Attachment No. 3 dated March 10, 2025*, subject to any extensions approved by the City in writing. The City's approval of any such extensions may not be unreasonably withheld, continued, or delayed. Any City decision to decline to approve extensions is per se reasonable if: there exists any Borrower default in relation to this Agreement; or if the Project, at the time of such decision, fails to comply with the City's Affordable Housing Loan Program

and Underwriting Guidelines. The Borrower must request an extension in writing.

5.3 Liens

Except as provided in this Agreement, Borrower has made no contract or arrangement of any kind which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien on the Property or any portion of the Property.

5.4 Restriction against Changes in Ownership, Management, and Control

5.4.1 Sole purpose

The purchase of the Property by Borrower and the undertakings pursuant to this Agreement are and will be for the purpose of developing the Project to provide affordable housing to low-income families and not for speculation in landholding. No voluntary or involuntary successor in interest of Borrower may acquire any rights or powers under this Agreement without the prior written consent of the City.

5.4.2 No ownership or control change

Except as expressly permitted herein, Borrower may not transfer, assign, convey, encumber, or lease the Property or any portion of the Property, or any equity interest, without the prior written consent of the City, except for individual units leased in the ordinary course of business.

5.4.3 Instruments affecting interest of Borrower

Except for the leases described in *Section 7* hereof or as otherwise permitted herein, Borrower will provide the City with a copy of any proposed contract, agreement, document, or related instrument which, if executed, would directly or indirectly convey, assign, encumber or change Borrower's interest as outlined in this *Section 5*. Borrower will indemnify, defend and hold the City harmless from and against all claims, demands and obligations asserted by or from any party claiming a right, interest or ownership in this Agreement, the Property or the Project, whether through or with Borrower or arising out of or in connection with any relationship entered into by Borrower.

5.5 Organization and Name

Borrower is a duly formed Non-Profit 501(c)(3) under the laws of Arizona and is qualified to transact business in the State of Arizona and has all requisite power and authority to own its properties and to engage in the business it conducts. Arizona Housing Development Corporation is the exact legal name of Borrower.

Borrower does not transact business under any names other than Arizona Housing Development Corporation.

5.6 Default in Indebtedness

Borrower is not in default with respect to any of its debts or obligations, and the making and performance of the Loan Documents will not (immediately, with the passage of time, or the giving of notice) result in any default under any contract, agreement, or instrument to which Borrower is a party or by which Borrower or the Property is bound or, to the best of Borrower's knowledge, violate any laws.

5.7 Authority

Borrower has full power and authority to enter into the Loan Documents, and to incur the obligations therein, and has taken all action necessary to authorize the execution, delivery and performance of the Loan Documents. Fernando Quiroz, as President of Arizona Housing Development Corporation, is authorized to execute and deliver the Loan Documents on behalf of Borrower.

5.8 Validity

The Loan Documents are valid, binding, and enforceable in accordance with their respective terms.

5.9 Pending Litigation

Except as disclosed by Borrower to the City in writing prior to the date of this Agreement, there are no actions, suits, or proceedings pending, or to the best of Borrower's knowledge, threatened in any court or before any governmental authority against or affecting Borrower or the Property, which would materially impair the Property or Borrower's ability to perform the covenants or obligations required to be performed under any Loan Document, or involving the validity, enforceability, or priority of any of the Loan Documents.

5.10 Compliance with Laws

To the best of Borrower's knowledge after due inquiry, Borrower has complied with all applicable laws with respect to any restrictions, specifications, or other requirements pertaining to the conduct of its business, including but not limited to, state and federal securities laws in connection with any sale of interests in the Property or Borrower. Borrower is not in default with respect to any governmental regulations.

6 CONDITIONS PRECEDENT TO LOAN

The City will not be obligated to make any disbursements on the Loan unless the following conditions precedent have been satisfied, as determined by the City in its sole discretion:

6.1 Submission of Evidence of Additional Funding

Borrower will submit to the City satisfactory evidence that Borrower has deposited or caused to be deposited (or a commitment from all lenders to make available under a signed loan agreement) the funds necessary to pay all of the monies, instruments, and documents designated for Borrower to pay or deposit in *Section 5.1* hereof.

6.2 Title Report, ALTA Policy and Surveys

Borrower will provide the City with: (a) a preliminary title report and commitment for the Property (the "Title Report") prepared by the title insurance department of the Escrow Agent (the "Title Company") evidencing that Borrower has title to Property as required in *Section 5*; (b) a binding commitment from the Title Company to issue to the City at Borrower's expense an ALTA extended coverage mortgagee's title insurance policy insuring the City's lien on the Property in the amount of the proceeds of the Loan (the "Title Policy"), subject only to those exceptions approved by the City in writing, and with such endorsements as the City will require; and (c) a boundary and encroachments survey of the Property and the improvements thereon, certified to the City and in form and substance satisfactory to the City (the "Survey"). The legal description shown on the Title Report and the Title Policy will be the same as reflected on the Survey, Borrower's deed to the Property, and on *Attachment No. 2*.

6.3 Commitments for Other Funds

Borrower will provide the City with evidence satisfactory to the City in its sole discretion may determine that Borrower has received a commitment for all the loans or other financing transactions from the funding sources described in *Section 2.3.3* hereof. In addition, if any portion of the Project is to be financed by any other loan or grant, Borrower will provide the City with evidence satisfactory to the City in its reasonable discretion that Borrower has received a commitment for each loan or grant. In any event, the total amount of all the commitments for loans or grants together with other sources described herein will be sufficient, as determined by the City, for completion of the Project in accordance with the Plans and the Development Budget.

6.4 Access to Site, Utility and Other Services

Borrower will provide the City with satisfactory evidence that for its proposed use of the Property: (a) there is adequate ingress and egress; (b) public water service is available or an adequate water supply from other sources is available; (c) adequate public sanitary sewer services are available; and (d) adequate electric power is available to the Property.

6.5 Compliance with Government Regulations Related to the Project

Borrower will provide the City with satisfactory assurances that upon completion of the Project in accordance with the Plans, the Project will be in compliance with any and all applicable local codes, construction standards, environmental regulations, zoning and other ordinances for the City of Yuma, and HUD requirements. Upon completion of the Project, Borrower will provide the City with satisfactory proof that the Project is in compliance with the above. Items may include but are not limited to, green tags, certificate of occupancy, inspections, asbestos clearance reports, and Section 3 documentation.

6.6 Labor Standards

All labor requirements set forth in 24 CFR 92.354, and if applicable, all construction contracts will contain all required wage provisions, including but not limited to, those required under; the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as amended; the Copeland Anti-Kickback Act of 1986, as amended; the Fair Labor Standards Act of 1938, as amended; and the provisions of 24 CFR Part 24 regarding Government-wide Debarment and Suspension, as amended.

6.7 Expenses

Borrower will provide the City with satisfactory evidence that all Closing Costs, including, but not limited to, title searches, lien searches, recordation costs, escrow fees and title insurance premiums in connection with the Loan, have been paid on or before the date the Loan closes, to the extent such fees and costs are to be paid from moneys other than the Loan.

6.8 Organizational Documents

Borrower will provide the City with copies of all organizational documents of Borrower, including a certificate of good standing; all certified by Borrower as of the date the Loan closes to be true, accurate and complete in all material respects.

6.9 Insurance

Borrower will provide the City with evidence satisfactory to the City that Borrower has obtained the insurance required by *Section 7.9* hereof.

6.10 Property Taxes and Assessments

Borrower will provide the City with evidence satisfactory to the City that all taxes and assessments levied against or affecting the Property and due and payable have been paid or are not yet delinquent.

6.11 Authority to Borrow

Borrower will provide the City with proper borrowing resolutions and authorizations satisfactory to the City.

6.12 HOME Program and Other HUD Regulations

Borrower will provide the City upon request with evidence satisfactory to the City that it is in compliance with all applicable HOME Programs and all other applicable HUD regulations.

6.13 Loan Documents

Borrower will deliver to the City fully executed duplicate originals of each of the Loan Documents and a copy of the final documents evidencing the loans described in *Sections 3.3 and 6.3* hereof, if any.

6.14 Appraisal

Borrower (at its sole cost and expense) will cause an independent appraiser to provide the City with a copy of an appraisal of the land value and the improvement value of the Property which reflects that the appraised value of the Property and Scope of Development as developed pursuant to the terms of this Agreement must equal or exceed the amount of the Loan.

6.15 Plans

Borrower will provide the City with a copy of detailed plans and specifications for the Project and any amendments thereto (the "Plans") and a Survey acceptable to the City which will include a site plan and a legal description consistent with *Attachment No. 2*, lot and improvement measurements, location of adjoining streets (or the distance to the nearest intersecting streets), and location and elevation of the 100-year floodplain (when applicable).

6.16 HUD Approval

The City will have received from HUD written authorization satisfactory to the City to fund the Loan to Borrower for development of the Property, including but not limited to, HUD's unconditional commitment of HOME Program funds in an amount not less than the Loan.

6.17 Other Items and Documents

Borrower will provide the City with such other items and documents relevant to the Loan as the City may require.

6.18 Lead-Based Paint

Borrower (at its sole cost and expense) will provide the City with satisfactory evidence that all residential units in the Project will be in compliance with the

regulations implemented under the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, as set forth at 24 CFR Part 35.

6.19 Environmental Report

Borrower (at its sole cost and expense) will provide the City with a satisfactory Phase I Environmental Assessment prepared by a firm acceptable to the City. If the Environmental Assessment reflects the existence of environmental hazards at the Property, Borrower will provide the City with a plan for removing any hazards prior to the completion of the Project. Any such plan will be approved by the City in its reasonable discretion prior to execution of the plan.

6.20 Architectural Barriers

Borrower will provide the City with satisfactory evidence that the development of the Project will be carried out in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157) and 24 CFR § 570.614, as applicable.

7 REPRESENTATIONS, WARRANTIES, AND COVENANTS REGARDING CONSTRUCTION, DEVELOPMENT, OPERATION, AND USE OF PROPERTY

To induce the City to make the Loan, Borrower represents, warrants, and covenants to the City as follows:

7.1 Scope of Development

Borrower will develop 16 units of rental housing. Six (6) will be market rate units and the following HOME and HOME-ARP assisted units will be occupied as follows:

HOME Assisted Units	Unit Type	AMI Requirement	Fixed or Floating Units?
1	2 Bedroom	60%	Floating Units
1	3 Bedroom	60%	Floating Units

HOME-ARP Assisted Units	Unit Type	Qualifying Population	Fixed or Floating Units?
4	2 Bedroom	QP	Floating Units
4	3 Bedroom	QP	Floating Units

The residential units at the Property will, at a minimum, meet and be in conformance with all building, electrical, plumbing, and other local codes, construction standards, environmental regulations, zoning, and other ordinances for the City of Yuma.

7.2 Plans and Specifications

Prior to commencing any work on the Project, Borrower will provide the City with current copies of the Plans for the Project, which will be subject to the City's reasonable review, solely for the purpose of ascertaining compliance with the provisions of this Agreement, and written approval, signifying only compliance with the provisions of this Agreement. The City agrees not to unduly delay its review of the Plans. The Plans will, in any event, be deemed approved by the City unless within 30 calendar days after the date of City's receipt of the Plans, the City rejects the Plans, in whole or in part, in writing. Upon the City's approval of the current Plans, Borrower will assign its rights in the Plans to the City with an assignment in the form of the Plans Assignment.

7.3 Changes to Plans

Any material changes which Borrower desires to make to the Plans must be submitted to the City for its review and written approval. The City agrees not to unduly delay its review of the Plans and will approve in accordance with *Section 7.2* in this Agreement.

7.4 Permits

Prior to commencing any work on the Project which requires permits from the City or any other governmental or other regulatory agency which has authority or jurisdiction over the Property or the Project, Borrower will provide the City with evidence satisfactory to the City that Borrower has secured, or caused to be secured, any and all such permits.

7.5 Construction Contracts and Bids

Prior to the City's issuance to Borrower of a notice to proceed with construction, Borrower will provide the City with copies of all contracts for architectural, engineering, construction, and other services relating to the Project.

7.6 Construction Quality

Borrower will cause all work on the Project to be performed and installed with labor and materials of at least the quality normally used by builders of good reputation in similar projects in the Yuma County, Arizona area, and in a good and workmanlike manner, in substantial accordance with the Plans (except for deviations approved in writing by all appropriate governmental authorities and by the City).

7.7 Cost of Development

Except as otherwise expressly provided in this Agreement, the cost of constructing the Property will be borne by Borrower.

7.8 Schedule of Performance

7.8.1 Complete on schedule

Borrower will begin and complete work on the Project within the times specified therefor in the Schedule of Performance or within such reasonable extensions thereof as may be granted by the City. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Borrower and the City.

7.8.2 Progress Report

During periods of work on the Project, Borrower will submit to the City a written report of the progress of the Project when and as requested by the City. The report will be in such form and detail as may be reasonably required by the City and will include a reasonable number of photographs (if any) taken since the last report by Borrower.

7.8.3 Progress after completion of construction; occupancy

Borrower must ensure that the requirements of CPD-21-10, 24 CFR §§ 92.252, and 253 are met. Borrower will aim to achieve full initial occupancy of the HOME units (as defined below) by bona fide and qualified tenants within 6 months of the Certificate of Occupancy, and, if unsuccessful, Borrower will immediately submit marketing information to the City and, if required, prepare within 1 month a marketing plan satisfactory to the City. Borrower must ensure that the Project achieves full initial occupancy of the HOME units by bona fide and qualified tenants within 12 months of the Certificate of Occupancy, and failure to do so is a material breach of this Agreement and Borrower will repay to the City all funds distributed by the City to Borrower under this Agreement; further, the notice and cure provisions of *Section 8.1* do not apply to breach of this section, wherein time is of the essence.

7.9 Risk Management

7.9.1 Indemnification

Borrower agrees to indemnify, defend, save and hold harmless the City, any jurisdiction or agency issuing permits for any work included in the Project, and their respective directors, officers, officials, agents, employees and volunteers (hereinafter referred to as "Indemnatee") from and against actual claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage

caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Borrower or any of Borrower's directors, members, officers, agents, employees, volunteers, General Contractor or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Borrower to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Borrower from and against any and all Claims. It is agreed that Borrower will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. THIS PROVISION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

7.9.2 Insurance policies

Borrower will furnish, or cause to be furnished, to the City duplicate originals or appropriate certificates and endorsements of bodily injury and property damage insurance policies to protect against loss from liability imposed by law for damages on account of property damage or personal injury, including death therefrom, suffered or alleged to be suffered by any person resulting directly or indirectly from any act or activities of the City or Borrower relating to the development required under this Agreement in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate limit for public liability and property damage, with the City of Yuma as an additional insured. All policies, except for Professional Liability, including Workers' Compensation, waive right of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by the Borrower under this Agreement. The insurance policy will specifically provide that it is primary, and noncontributory, coverage and that coverage will not be reduced or canceled during the term of this Agreement until after 30 days prior written notice of cancellation or reduction has been served upon the City in the manner provided in *Section 9.7* hereof. Notwithstanding the foregoing, in accordance with A.R.S. § 44-1208 Borrower shall not be required to obtain property insurance coverage in any amount greater than the replacement cost of the improvements on the Property.

7.9.3 Contractor insurance – Builder’s Risk

Borrower will require the General Contractor or Borrower to obtain adequate builder’s all-risk, fire and general liability insurance coverage, from an insurance company and in amounts satisfactory to Borrower and City, to ensure the completion of the development and to prevent the City or Borrower from incurring any liability for claims arising from the development of the Property pursuant to this Agreement. Said insurance will be in addition to, and will not take the place of, the coverage and indemnification pursuant to *Sections 7.9.1 and 7.9.2* hereof. Borrower will obtain and furnish the City with verification that insurance pursuant to this *Section 7.9.3* has been obtained by the General Contractor prior to the commencement of development of the Property. Such insurance shall include endorsements: (1) naming the City as additional insured, (2) shall be primary with a waiver of subrogation, and (3) shall include a 30-day advance notice to the City of cancellation.

7.9.4 Insurance per schedule

Borrower will obtain and maintain at all times during the term of the Loan, insurance policies of the nature and in the amounts specified in *Attachment No. 10* entitled Insurance Specifications.

7.9.5 Reserve for Replacements

On the first day of each calendar month commencing after the permanent financing for the Project closing, Borrower shall fund a Reserve for Replacements in an amount equal to \$350 per unit per year, increasing by 3% per year, for each and every unit, for the term of the Loan. The annual amount of contributions to the Reserve for Replacements shall be funded in 12 equal monthly payments, provided that the Borrower shall increase the minimum funding of the Reserve for Replacements if necessary to comply with sound asset management principles. The Borrower may make withdrawals from the Reserve For Replacements solely for the purpose of paying the cost of capital items, which shall consist of the acquisition or replacement of property expected to have a useful life of 5 years or more and the cost of repairs to property that will extend the useful life of such property by 5 years or more. Notwithstanding anything to the contrary contained herein, Borrower may satisfy this requirement by funding the Replacement Reserve required by Permanent Lender, if applicable, during the amortization of the loan by the Permanent Lender. Upon full amortization of the loan by the Permanent Lender, any Reserve for Replacements balance shall be held in a separate account by Borrower for the remainder of the Loan term.

7.9.6 Casualty and Condemnation

Notwithstanding any statement in the Loan Documents to the contrary (other than *Section 10* of the Deed of Trust, which prevails over this *Section 7.9.6*), the City and Borrower agree that if the Property, or any portion thereof or any improvement thereon, is damaged, destroyed or condemned, or acquired for public use, that the insurance proceeds or proceeds of any such condemnation or acquisition will be assigned in full and paid to the Borrower, who shall cause such proceeds to be used to repair and restore same to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter operate the Property in accordance with the terms of the Loan Documents. If repair or restoration of the Property is not practicable, Borrower shall not be obligated to repair or restore the Property, and an award of damages under this Section up to the amount of the unpaid principal and accrued interest of the Loan described in the Loan Documents shall, subject to the rights of any senior Lender, be paid to the City and any remaining balance shall be paid to Borrower. The City shall be a party to any agreement relating to the use of condemnation proceeds or insurance proceeds from damage to the Property to repair and restore the Property.

7.10 Local, State and Federal Laws

Borrower will develop, operate and use the Property and the Project in strict compliance with all applicable laws and regulations, including, if applicable, the following: all federal and state labor standards; the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332; the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq.; Drug Free Workplace Act, 41 U.S.C § 701; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 700 et seq.; 24 CFR § 92.354; HUD Handbook 1344.1; and all laws relating to health and safety and the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Water Act, 33 U.S.C. § 1251; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Resource Conservation and Recovery Act; the Occupational Safety and Health Act; the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157); and any similar or implementing state law or regulations, including but not limited to A.R.S. § 49-201 et seq. Borrower will indemnify and hold harmless the City from and against any and all claims, demands, causes of action, proceedings, liability, loss, damage, costs and expenses (including reasonable attorneys' fees and court costs) arising from or as a result of Borrower's failure to strictly comply with such laws or regulations.

7.11 Equal Employment Opportunity

7.11.1 Borrower compliance

Borrower will comply with all applicable local, state, and federal fair employment laws and regulations.

7.12 Responsibilities of the City

The City, without expense to Borrower or assessment or claim against the Property (except as provided herein), will perform all City actions specified herein within the times specified in the Schedule of Performance. If no time is specified, the City shall perform all actions herein required within a reasonable time.

7.13 Taxes, Assessments, Encumbrances and Liens

7.13.1 Pay taxes

Borrower will pay or cause to be paid when due all real estate taxes and assessments on the Property. Borrower will not place or allow to be placed on the Property, or on any portion of the Property, any mortgage, deed of trust, encumbrance or lien not authorized by this Agreement.

7.13.2 Unencumber

In the event that any liens or encumbrances (except the lien for real property taxes not yet due and liens and encumbrances reflected in the title insurance policy approved by the City with the Closing of the Loan) are filed against the Property or the Project, within 30 days of the date that Borrower or the City receives notice of the same, whichever occurs first, Borrower will have all liens released or bonded-over in a manner acceptable to the City. Borrower may contest in good faith the validity or amount of any such lien or encumbrance by appropriate proceedings provided by law, including payment thereof under protest, if required, upon furnishing to the City a cash deposit or other security in an amount and in form satisfactory to the City, which deposit or other security will be returned to the party depositing the same upon final payment by Borrower of said lien or encumbrance; provided, however, that upon final determination with respect to any such contested lien or encumbrance, Borrower will promptly pay any sums found to be due by it thereon.

7.14 Right of the City to Satisfy Liens on the Property

Upon prior written notice to Borrower, the City will have the right but not the obligation to satisfy any liens or encumbrances on the Property or any portion of the Property which have not been approved by the City in accordance with this Agreement, if Borrower has had a reasonable time to challenge, cure or satisfy

those liens or encumbrances. In such event, the City will be entitled to elect (i) reimbursement from Borrower of all costs and expenses in curing or satisfying such lien or encumbrance or (ii) to add such costs and expenses to the outstanding principal balance of the Loan, which will be secured by the Deed of Trust. The City will also be entitled to a lien upon the Property, or portion thereof, to the extent of such unreimbursed costs and disbursements. Notwithstanding the foregoing, nothing in this Agreement requires Borrower to pay or make provision for the payment of any tax, assessment, lien or charge so long as Borrower in good faith contests the validity or amount thereof, and so long as such delay in payment will not subject the Property or such portion of the Property to forfeiture or sale. The City, in its reasonable discretion, may release any abatement liens it possesses on the Property.

7.15 Uses

7.15.1 Period of Affordability

Borrower covenants and agrees that for a period of time commencing on the date the Declaration is executed by Borrower and expiring 20 years from the completion date in the Certificate of Completion (as defined in *Section 7.31* hereof) (the Period of Affordability”), Borrower and such of its successors and assigns as the City approves in writing, will use the HOME units (as defined in *Section 7.21* hereof) solely to provide affordable housing to low-income individuals and families, and the HOME-ARP units, solely to provide housing to qualified persons and otherwise comply with the requirements of the HOME and HOME-ARP Program and the provisions of this *Section 7.15*.

7.16 Maintenance of the Property and Inspection for Compliance

7.16.1 Maintenance

Borrower will maintain the Property in accordance with all applicable City of Yuma building, plumbing and electrical codes, construction standards, environmental regulations, and the neighborhood preservation ordinance, zoning ordinance, and other ordinances. Borrower also will cause the Property to be kept free from any accumulation of debris or waste materials.

7.16.1 Create Housing Quality

On or before each anniversary of the date of the Certificate of Completion, Borrower will provide the City or its representative with a reasonable right of access to the Property, subject to the rights of the existing tenants and the records relating thereto, to permit the City to determine if the Property

satisfies all applicable City of Yuma codes and HUD HOME program Housing Quality Standards, as may be amended.

7.16.2 Determination in Writing

Within 30 days of the inspection, the City will determine if the Property satisfies the housing standards for the City of Yuma. Any such determination will be set forth in writing and, in the event the City determines that the Property is not in compliance with standard, such writing will set forth the basis of that determination and the cure period.

7.16.3 Deemed Determination

Notwithstanding the foregoing, any failure of the City to issue such determination within the 15-business day period will be deemed that the Property satisfies all applicable local building, plumbing and electrical codes, construction standards, environmental regulations, zoning ordinances, and all other City of Yuma ordinances.

7.17 Obligation to Refrain from Discrimination

There will be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, sex (including gender identity and sexual orientation), national origin, familial status, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, and Borrower (itself or any person claiming under or through Borrower) will not establish or permit any such practice or practices of discrimination, or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees thereof or any portion thereof. The Property will be used exclusively by the owner for secular purposes, available to all persons regardless of religion, and there will be no religious or membership criteria for tenants of the Property.

7.18 Other Equal Opportunity and Fair Housing Requirements

Borrower will operate the Property and the Project in compliance with the provisions of 24 CFR §§ 92.350 and 92.354, and the requirements of the Fair Housing Act (42 U.S.C. §§ 3601-3620), Executive Order 11063 as amended by Executive Order 12259, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), the prohibitions against age discrimination under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107) and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), Executive Order 11246, as amended by Executive Order 11375, 11478, 12086 and 12107, and supplemented by 41 CFR Part 60, SECTION 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) ("SECTION 3"), Executive Orders 11625, 12007, 12432 and 12138, as amended by Executive Order

12608, and all regulations now or hereafter implementing those Acts or Executive Orders.

7.19 Tenant Selection – HOME

Prior to leasing any HOME or HOME-ARP unit at the Property, Borrower will adopt written tenant selection policies and criteria (“Tenant Selection Policies”) consistent with 24 CFR § 92.253(d), and approved in writing by the City, that: (a) are consistent with the purpose of providing affordable housing for low income families under the HOME and HOME ARP Program and the applicant’s ability to perform the obligations of the lease; (b) are reasonably related to eligibility under the HOME or as applicable, HOME-ARP Program; (c) give reasonable consideration to the housing needs of persons that would have a preference under 24 CFR Part 5, Subpart D; and (d) provide for (1) the selection of tenants from written waiting lists in the chronological order of their application, insofar as is practicable, and (2) the prompt written notification to any rejected applicant of the grounds of any rejection. Borrower will implement the approved Tenant Selection Policies in connection with all prospective tenants of HOME and HOME-ARP units at the Property.

7.20 Leases

The terms of all leases utilized by Borrower to lease HOME or HOME-ARP units at the Property and any termination of such lease will comply with 24 CFR § 92.253 and the provisions of *Section 7.21* hereof and all applicable laws. All leases will include the HUD Violence Against Women’s Act (VAWA) Lease Addendum per 24 CFR § 92.359 (e). The City will approve the form and substance of any such lease, which will not be amended or supplemented without the City’s prior written consent (such consent not to be unreasonably withheld or delayed).

7.21 Income Targeting

7.21.1 HOME Units

During the Period of Affordability, two (2) rental units at the Property will be designated as HOME units, with the following unit characteristics: one (1) two-bedroom units with 800 square feet; and one (1) three-bedroom units with 1,000 square feet. All of the HOME units will be occupied by households whose income does not exceed 60% of area median income, adjusted for household size. The HOME units are designated as floating HOME units pursuant to 24 CFR 92.252(j).

7.22 Rent Limitation & Utility Allowance

7.22.1 During Period of Affordability

During the Period of Affordability, the rent, including tenant-paid utilities, charged for the units will not exceed the lesser of the High-HOME rent or fair market rent as published by HUD. The rent charged for the units will not exceed the lesser of: (i) 30% or 50% of the Area Median Income; or (ii) the fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR § 888.111; or (iii) the City of Yuma published rents, less the monthly allowance for utilities and services (excluding telephone) to be paid by the tenant. This utility allowance is set annually by the City in accordance with 24 CFR § 92.252(d). During the Period of Affordability, the initial rents and any increase in rents for the HOME and HOME-ARP Units will be subject to the prior written approval of the City.

7.22.2 Family definition

For purposes of this Agreement, the terms “family” and “families” have the same meaning given those terms in 24 CFR § 5.403.

7.22.3 SECTION 8 nondiscrimination

The HOME Units may not be refused for leasing to a holder of a certificate or voucher under 24 CFR Part 982 or to the holder of a comparable document evidencing participation in a SECTION 8 tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate or voucher, or comparable SECTION 8 tenant-based assistance document.

7.23 Annual Review of Rents and Income Verification

Borrower will re-examine household income, composition, and rents for the HOME and HOME-ARP Units annually in accordance with 24 CFR Part 5, Subpart F and 24 CFR § 92.252. For the purposes of this Agreement, a household’s income will be determined in accordance with 24 CFR § 5.609. Rents proposed by Borrower for HOME and HOME-ARP Units must be approved in writing by the City before taking effect.

7.24 Affirmative Marketing and Occupancy Verification

Borrower will comply with the affirmative marketing procedures and requirements adopted by the City pursuant to the HOME Program for all HOME and HOME-ARP Units at the Property, and as outlined in the Affirmative Marketing Monitoring and Occupancy Verification Report attached as *Attachment No. 11* (the “Monitoring Report”), which Borrower will prepare and submit to the City annually beginning on the date 6 months after the certificate of occupancy and every 12 months thereafter during the Period of Affordability.

7.25 Recordkeeping

7.25.1 Records separate

THIS *SECTION 7.25.1* WILL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. Borrower will keep separate records and accounts of its activities relating to the development and maintenance of the HOME and HOME-ARP Units at the Property and compliance with the requirements of this Agreement and the HOME Program per 24 CFR 92.508. These records will include evidence of:

- A. Program records;
- B. Project records;
- C. CHDO records;
- D. Financial records;
- E. Program administration records; and
- F. Records concerning other Federal requirements.

7.25.2 Record inspection

On or before each anniversary of the recording of the Certificate of Completion, Borrower will provide the City or its representative with a reasonable right of access to the Property, subject to the rights of the existing tenants, to the records required by *Section 7.25* hereof, and to the records referred to in *Section 7.26* hereof, to permit the City to determine if such records satisfy the requirements of *Section 7.25.1* and the postings required by the Monitoring Report.

7.25.3 Determination in writing

Within 15 business days of such inspection, the City will determine if the Property conditions satisfy the requirements of *Section 4.3.8*. Any such determination will be set forth in writing and, in the event the City determines that the Property conditions are not in compliance with *Section 4.3.8*, such writing will set forth the basis of that determination.

7.25.4 Deemed determination

Notwithstanding the foregoing, however, any failure of the City to issue such determination within the 15 business day period will be deemed to be a determination by the City that Borrower's records comply with *Section 7.25.1* and the postings on the Project comply with the Monitoring Report.

7.26 Other Rights of Access

Representatives of the City, HUD, the Comptroller General of the United States, and the Government Accounting Office, or any of their representatives will have a reasonable right of access to the Property (upon reasonable written notice and subject to the rights of the tenants in residence under their respective leases) and all books, documents, papers and records of Borrower, , which are pertinent to any activity performed under this Agreement (without charges or fees), for the purpose of monitoring Borrower's operation of the Property and the Project under this Agreement, obtaining adequate information to determine the financial condition and continued financial viability of the Project, and auditing, examining and taking excerpts and transcriptions.

7.27 Annual Reports and Inspection

7.27.1 Annual Report

On or before August 1st of each year, Borrower will submit the following items:

A. An annual report and financial statement for the HOME and HOME-ARP Units and the Property (the "Annual Report") to the City prepared by an independent certified public accountant or other person, who in either case has been approved by the City in writing (the "Auditor"). The Annual Report will include adequate information for the City to determine the financial condition and continued financial viability of the Project, the designated unit numbers of the HOME and HOME-ARP Units, data evidencing the income of each person who resides in the Units during the period from July 1st through June 30th of each year, an operating statement reflecting income and expenses for the reporting period for the Property, a certification by the Auditor that the annual income of all tenants occupying the Units during the reporting period satisfies the requirements of 24 CFR Part 5, Subpart F, and this Agreement, and otherwise be such in form and substance as is acceptable to the City.

B. An Annual Project Cash Flow Analysis Report prepared by Borrower and Certified by the Auditor as outlined in *Section 3.1.4*. The Annual Project Cash Flow Analysis Report must include a complete report of all cash flow, including but not limited, to all information that is required for the parties to determine the amount of Surplus Cash, a report of all Loan advances, all interest accrued on the Loan, and all payments to other lenders or to Borrower.

C. Affirmative Marketing and Occupancy Verification as outlined in *Section 7.24*. Within 30 days after receipt of the Annual Report, the City will approve or disapprove the operation of the Property as reflected in the Annual Report. Any such approval or disapproval will be set forth in writing and in the event the City disapproves of the operation of the Property as reflected in an Annual Report, such writing will set forth the basis of that determination and the cure period. Notwithstanding the foregoing, however, any failure by the City to approve or disapprove the operation of the Property within the 30-day period (whether in writing or otherwise), may not be deemed to be a waiver of the City's right to approve or disapprove the operation thereof as reflected in the Annual Report.

7.27.2 Unit inspection; Period of Affordability

During the Period of Affordability, the City will be entitled to inspect the HOME and HOME-ARP Units and the Property, on an annual basis, for compliance with the terms of this Agreement, including, but not limited to, compliance with the Yuma County HOME Consortium's Housing Property Standards. The City will give Borrower not less than 72 hours prior notice of such inspections, and Borrower will provide the tenants of the Property such prior written notice as is required by the Arizona Residential Landlord Tenant Act (A.R.S. § 33-1301 et seq.).

7.28 Compliance with HUD and OMB Regulations

7.28.1 Borrower to provide HUD compliance evidence

Borrower will provide the City upon request with evidence satisfactory to the City that it is in compliance with all applicable HOME Program and all other applicable Federal regulations.

7.28.2 Borrower to provide procurement compliance evidence

Borrower will provide the City upon request with evidence satisfactory to the City that it is in compliance with OMB Guidelines on Government-wide Debarment and Suspension (Non-procurement). As a condition of participating in the Agreement and the transactions contemplated hereby, Borrower must comply with the requirements of subpart C of the OMB guidance in 2 CFR part 180, as supplemented by 2 CFR part 2424, and must require each person with whom Borrower enters into a covered transaction as defined by said regulations to comply with the regulations.

7.29 Legal Worker Requirements

If Borrower is an employer, or if, while the Loan is outstanding, Borrower becomes an employer, as that term is defined in A.R.S. § 23-211(4) or any successor statute,

Borrower must comply with A.R.S. § 23-214.B; and if Borrower is not an employer, then Borrower must certify that status to the City in a sworn declaration in the form of *Attachment No. 12* ("Borrower Certification"). A.R.S. § 23-214.B reads:

"In addition to any other requirement for an employer to receive an economic development incentive from a government entity, the employer shall register with and participate in the e-verify program. Before receiving the economic development incentive, the employer shall provide proof to the government entity that the employer is registered with and is participating in the e-verify program. If the government entity determines that the employer is not complying with this subsection, the government entity shall notify the employer by certified mail of the government entity's determination of noncompliance and the employer's right to appeal the determination. On a final determination of noncompliance, the employer shall repay all monies received as an economic development incentive to the government entity within thirty days of the final determination."

7.30 Relocation Requirements

In the event it becomes necessary to relocate residents of the Property, either temporarily or permanently, due to the development of the Property, such relocation will be carried out in compliance with 24 CFR § 92.353 and all applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4201-4655).

7.31 Certificate of Completion

7.31.1 Completion of construction to be memorialized by Certificate

After completion of the construction of the Property by Borrower in accordance with the Scope of Construction and the Specifications, Borrower shall request that the City issue a certificate of completion. The City, upon determining in its reasonable discretion that the Project has been substantially completed, shall furnish Borrower with a certificate of completion (the "Certificate of Completion"). The Certificate of Completion shall be, and shall state that it constitutes, a conclusive determination of satisfactory completion of the Project as required by this Agreement. The Certificate of Completion shall be in the form of *Attachment No. 13*.

7.31.2 No Certificate of Completion

If the City refuses or fails to furnish the Certificate of Completion after a written request therefor by any entity entitled thereto pursuant to this *Section 7.31*, the City will, after such written request, provide the

requesting party with a written statement of the reasons why the City refuses or fails to furnish such Certificate of Completion. The statement will also contain the City's opinion of the action that must be taken to obtain such Certificate of Completion.

7.31.3 Not evidence of compliance

The Certificate of Completion will not constitute evidence of compliance with or satisfaction of any obligation of Borrower to any other person or entity. The parties' duties pursuant to this Agreement extend beyond the date of the Certificate of Completion.

7.32 Training, Employment and Contracting Opportunities for Businesses and Lower Income Persons

7.32.1 SECTION 3 applicable

The Project is assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the Project. This will also involve documenting all labor hours associated with the construction of the project.

7.32.2 SECTION 3 plan

Notwithstanding any other provision of this Agreement, Borrower will carry out the provisions of SECTION 3 and the regulations issued by HUD as set forth in 24 CFR Part 75, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement. The requirements of the regulations include utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the Project; the making of a good faith effort, as defined by the regulations, to provide training, employment and business opportunities required by SECTION 3; and incorporation of the "SECTION 3 clause" specified by 24 CFR § 75.27 of the regulations in all contracts for work in connection with the Project. Borrower certifies and agrees that Borrower is under no contractual or other disability which would prevent compliance with these requirements.

7.32.3 Borrower compliance

Borrower agrees to be bound by the above SECTION 3 clause with respect to Borrower's own employment practices when participating in federal assisted work.

8 DEFAULTS AND REMEDIES

8.1 Defaults - General

8.1.1 Events of Default

The existence or occurrence of any one or more of the following events, after any applicable notice and cure periods, will constitute an event of default (individually, an "Event of Default") under this Agreement and each of the Loan Documents:

8.1.1.1 Failure to make available

Borrower's failure to make available for rental all of the HOME and HOME-ARP Units at the Property solely for the purpose of providing affordable housing to QP Individuals and Families, and other low income households pursuant to this Agreement during the required periods.

8.1.1.2 Failure to perform

Borrower's failure to comply with or perform any covenant or obligation set forth in this Agreement, the Deed of Trust or any other Loan Document, including but not limited to, the restrictive covenants set forth in the Declaration, and such failure remains uncured for 30 days after written notice of such failure; provided, however, if Borrower diligently takes such action to cure the default, but cannot do so within such 30 day period, then Borrower shall notify the City of when Borrower expects the default to be cured and Borrower shall have an additional 60 days to cure the default.

8.1.1.3 Breach of any material representation or warranty

The breach of any material representation or warranty set forth in this Agreement or any other Loan Document, or the existence of any material misrepresentation of fact by Borrower in any document submitted to the City in support of the Loan or in connection with any of the Loan Documents and remain uncured for 30 days after written notice thereof.

8.1.1.4 Failure of insurance

Borrower's failure to obtain and maintain the insurance required under this Agreement and the other Loan Documents, and such failure continues for a period of 10 days after written notice thereto.

8.1.1.5 Failure of diligence

Following commencement of work on the Project and prior to issuance of the certificate of occupancy, the substantial and unscheduled discontinuance of work on the Project for a period of 30 consecutive days other than due to reasons of Force Majeure, unless Borrower demonstrates to the satisfaction of the City in its sole discretion that construction of the Project will be completed on or before the date set forth in the Schedule of Performance.

8.1.1.6 Failure to cure

Borrower's failure to cure promptly any violation of any law or regulation resulting from or related to the Property or work on the Project or any portion of the Project; or Borrower's failure to comply promptly with any provision of any notice, issued by or filed in any department of any governmental authority having jurisdiction over Borrower, the Property or the Project, of any requirement or any law or regulation having any effect on or relation to the Property or the Project; or Borrower's failure to furnish to the City, immediately and without demand, a true copy of any notice or other document received by or available to Borrower disclosing any such requirement or violation of any such law or regulation, or otherwise bearing upon the compliance of the Property or the Project with any applicable law or regulation. In this regard, "promptly" means within 30 days, then the commencement of action to cure or comply with the same 30 days and the diligent prosecution to completion.

8.1.1.7 Cross default

A default by Borrower on any other obligation it may have to the City.

8.1.1.8 Assignment

The making by Borrower or any other person or entity that is or may become liable hereunder of an assignment for the benefit of its creditors.

8.1.1.9 Receiver appointment

The appointment of (or application for appointment of) a receiver of Borrower or any other person or entity who is or may become liable hereunder, or the voluntary filing by Borrower, or any other person or entity who is or may become liable hereunder, of a petition or application for relief under federal bankruptcy law or any similar state or federal law, or involuntary filing (not dismissed within 60 days thereof) against Borrower, or any other person or entity who is or may become liable hereunder, of a petition or application for relief under federal bankruptcy law or any similar state or federal law, or the issuance of any writ of garnishment, execution or attachment for service with respect to Borrower or any person or entity who is or may become liable hereunder, or any property of Borrower or property of any person or entity who is or may become liable hereunder.

8.1.2 Material adverse change

The occurrence of any material adverse change in the condition (financial or otherwise) of Borrower or any person or entity that is or may become liable hereunder.

8.1.2.1 Transfer without consent

Borrower transfers any right or obligation under this Agreement without the City's prior written consent.

8.1.2.2 Undisputed legitimate concern

The City shall have given Notice that in good faith it reasonably deems itself insecure or believes that the prospect for performance is impaired, supported by specific allegations of fact, that are not rebutted by Borrower with substantial contrary evidence within 10 days.

8.1.2.3 Impairment

The occurrence of any event (including, without limitation, a change in the financial condition, business, or operations of Borrower) that materially and adversely affects the ability of Borrower to perform any of its obligations herein under the Loan Documents.

8.1.2.4 Encumbrance

Borrower's failure to maintain good and marketable fee simple title to the Property free and clear of all liens, charges, claims,

encumbrances, and other matters (other than statutory encumbrances for work being performed on the Property, and for which the Borrower has posted payment and performance bonds), except for the Permitted Encumbrances.

8.2 Remedies

8.2.1 Effect of default

Upon the occurrence of any Event of Default, the entire principal balance of the Loan and any other amounts owed to the City under this Agreement or the other Loan Documents will become immediately due and payable without notice, and the City will have the right, but not the obligation, to withhold any disbursement of Loan, enforce the restrictive covenants in the Declaration, foreclose the Deed of Trust, exercise all rights and remedies to enforce the security interest granted in the Deed of Trust under the Arizona Uniform Commercial Code, and enforce all its other rights and remedies under the Loan Documents and/or available to it at law or in equity.

8.2.2 Protective Advances

Upon the occurrence of an Event of Default, the City may in its sole discretion make such payments and do such acts as the City may deem necessary to protect its security interest in the Loan including, without limitation, paying, purchasing, contesting, or compromising any lien or encumbrance, whether superior or inferior to such security interest and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorneys' fees) incurred in connection therewith (the "Protective Advances"), and add the amounts of the Protective Advances paid by the City to the principal balance of the Note.

8.2.3 Applicable Rate

Notwithstanding the foregoing, upon the occurrence of any Event of Default, the City will have the right, but not the obligation, to increase the interest rate applicable to the Loan to 11% per annum, retroactive to the initial date of noncompliance, which rate shall continue in effect until Borrower shall have established that it is in compliance with such covenants to the City's reasonable satisfaction.

8.3 Attorneys' Fees and Costs

If any legal action is instituted pursuant to this Agreement or any of the Loan Documents, the prevailing party in such action will be reimbursed by the other

party for all costs and expenses of such action, including reasonable attorneys' fees as may be fixed by the Court.

8.4 Acceptance of Legal Process

8.4.1 Service on City

In the event that any legal action is commenced by Borrower against the City, service of process on the City will be made by personal service upon the City Clerk of the City of Yuma, or in such other manner as may be provided by law.

8.4.2 Service on Borrower

In the event that any legal action is commenced by the City against Borrower, service of process will be made by personal service or in such other manner as may be provided by law, whether made with or without the State of Arizona.

8.5 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of its rights or remedies will not preclude the exercise by it, at the same time or any different time, of any other rights or remedies for the same Event of Default of any other Event of Default.

9 GENERAL PROVISIONS

9.1 Laws and Regulations

Borrower shall comply with the Americans with Disabilities Act (ADA) and shall indemnify City for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA. Borrower shall not discriminate against any person on the basis of race, religion, color, age, sex, or national origin in the performance of this Agreement, and must comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964) and State Executive Order No. 2009-09. The Borrower shall not participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Arizona state law. The Borrower shall include similar requirements of all sub-Borrowers in Agreements entered for performance of Borrower's obligations under this Agreement. Borrower shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Borrower is responsible abides by, and remains in compliance with, all rules, regulations, ordinances,

statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations; (B) existing and future State and Federal laws; and (C) existing and future Occupational Safety and Health Administration standards. Borrower shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its performance under this Agreement.

9.2 Termination for Convenience

At any time prior to the initial disbursement of Loan, this Agreement and any undisbursed portion of the Loan may be terminated for convenience by the City or Borrower, in whole or in part. Notwithstanding the foregoing, if Borrower has the right to, and desires to, terminate this Agreement and any undisbursed portion of the Loan in part, the City will have the right to terminate the whole Agreement and the whole Loan in full if the City determines that the remaining portion of this Agreement and the Loan will not accomplish the purposes for which this Agreement and the Loan were made. Further, in the event of termination of this Agreement in whole or in part, if a party has received consideration for which performance has not been rendered, then at the option of the other party, the consideration must be returned or the performance rendered to the extent of the value of the consideration received.

9.3 Certification Regarding Debarment, etc.

By executing this Agreement, Borrower certifies to the City and HUD, and in addition agrees that in any proposal submitted to the City in connection with this Agreement Borrower will further certify to the City and HUD, that neither Borrower nor its principals or contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction evidenced by this Agreement by any federal department or agency, and further agrees to comply with the requirements of 2 CFR Part 2424.

9.4 Other Laws, Rules, Regulations and Directives

Borrower, and any of its contractors, will comply with all other applicable federal, state or local laws, rules, regulations, orders and directives.

9.5 Representations and Warranties Regarding Use of Federal Funds

Borrower hereby represents and warrants the following to the City and to HUD in connection with acquisition of the Property and the Project:

9.5.1 No federal funds for lobbying

No federal appropriated funds have been paid or will be paid, by or on behalf of Borrower, to any person for influencing or attempting to

influence an officer or employee of any government agency, the City or Congress, or a member of Congress or employee of a member of Congress in connection with the execution of this Agreement or the making of the Loan hereunder.

9.5.2 Lobbying disclosure

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any government agency, the City or Congress, or a member of Congress or employee of a member of Congress in connection with this Agreement or the making of the Loan, Borrower will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

9.5.3 No external consideration

Borrower has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys.

9.5.4 Subaward compliance

If applicable, Borrower will require that the language in *Sections 9.5.1, 9.5.2, and 9.5.3* hereof be included in any award documents for all subaward tiers (including subcontracts, subgrants, loans, and cooperative agreements) and that any subrecipients will certify and disclose to the City and HUD accordingly.

9.6 Continuing Liability

Borrower will have continuing liability after the term of this Agreement for any breach of this Agreement, including the failure to perform in accordance with required federal law and the rules and regulations promulgated thereunder until and after all complaints, investigations, and sanctions, including those arising out of audits performed by the City, HUD or other authorized agencies are resolved. Borrower will be liable for any sanctions or requirements imposed at any time upon the City arising out of the activities performed by Borrower under this Agreement.

9.7 Notices, Demands and Communications between the Parties

9.7.1 Notice proper

All notices, demands or other writings in this Agreement provided to be given, made or sent by any party to other parties will be deemed to have

been fully given, made, or sent when made in writing and hand-delivered or three days after being deposited in the United States mail, postage paid, registered or certified, and addressed as follows:

To City: City of Yuma
Neighborhood Services Division
One City Plaza
Yuma, Arizona 85364
Attn: Neighborhood Services Manager

With a copy to: City of Yuma
Office of the City Attorney
One City Plaza
Yuma, Arizona 85364
Attn: City Attorney

To Borrower: Arizona Housing Development
Corporation/Magnolia Gardens
420 S Madison Avenue
Yuma, AZ 85364
Attn: Luz Acosta, Development Officer

With a copy to: Arizona Housing Development
Corporation/Magnolia Gardens
420 S Madison Avenue
Yuma, AZ 85364
Attn: Fernando Quiroz, President

9.7.2 Amendment

The address to which any notice, demand or other writing may be given, made, or sent to any party may be changed by written notice given by such party as provided above.

9.7.3 General address

All other items required to be submitted to the City by Borrower will be delivered to the City Planning and Neighborhood Services Department at the above address.

9.8 Conflict of Interest

No member, official, employee, agent, consultant, or officer of the City will have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law. Borrower further will comply with the conflict-of-interest provisions set forth in 24 CFR § 92.356 and HUD CPD Notice 21-10 Section H. In addition, the parties hereto acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

No employee, agent, consultant, elected official, or appointed official of AHDC may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:

- A. Any interest in any contract, subcontract or agreement with respect to a HOME-assisted or HOME-ARP assisted project or program administered by the CHDO, or the proceeds thereunder; or
- B. Any unit benefits or financial assistance associated with HOME projects or programs administered by the CHDO, including occupancy of a rental housing unit in a HOME-assisted or HOME-ARP assisted rental project.

This prohibition does not apply to an employee or agent of the CHDO who occupies a HOME-assisted unit as the on-site project manager or maintenance worker.

In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of the City shall be permitted to receive or share any financial or unit benefits arising from the HOME-assisted or HOME-ARP assisted project or program.

Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by the CHDO in writing to the City and HUD. The CHDO must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. Forward the requests to HUD as permitted by 24 CFR 92.356, 85.36 and 84.42, as they apply with a copy to the City.

9.9 Non-liability of City Officials and Employees

No member, official, or employee of the City will be personally liable to Borrower, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Borrower or its successors, or on any obligation under the terms of this Agreement.

9.10 Enforced Delay: Extension of Time of Performance

In addition to specific provisions of this Agreement, performance by any party will not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, injunction, unusually severe weather, inability (when either party is faultless) of any contractor, subcontractor or supplier, or acts of the other party. An extension of time for any such cause will only be for the lesser of the period of the enforced delay or 30 days. Times of performance under this Agreement may also be extended in writing by both parties.

9.11 Plans and Data

If Borrower does not proceed with the Project, or if this Agreement is terminated with respect thereto for any reason, within 15 days of such termination, Borrower will deliver to the City any and all Plans and data concerning the Property or the Project which are the property of Borrower.

9.12 Submission of Satisfactory Document or Evidence

Whenever this Agreement requires Borrower to submit satisfactory plans, drawings, evidence, proof, or documents to the City for approval, the City will have the right to determine if the plans, drawings, evidence, proof, or documents submitted are satisfactory in the City's reasonable discretion.

9.13 Approvals by the City

Except for those matters within the sole discretion of the City, wherever this Agreement requires the City to approve any contract, documents, plan, proposal, specification, drawing or other matter, such approval will not be unreasonably withheld or delayed.

9.14 Time of Essence

Time is of the essence of this Agreement and of every term, condition, and covenant hereof.

9.15 No Waiver

Except as otherwise expressly provided in this Agreement, any delay or omission by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

9.16 Survival

ALL OF THE REPRESENTATIONS, WARRANTIES, AND INDEMNITIES SET FORTH IN THIS AGREEMENT WILL SURVIVE THE CLOSING AND THE EXPIRATION OR TERMINATION OF THE LOAN.

9.17 Severability

If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and will be valid and enforceable to the fullest extent permitted by law.

9.18 Captions

The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.

9.19 Governing Law

This Agreement is governed by the laws of the State of Arizona.

9.20 Entire Agreement

This Agreement is executed in counterparts each of which is deemed to be an original. This Agreement includes the attachments identified herein, which constitute the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. The attachments to the agreement are as follows:

- Attachment No. 1: CHDO Certification and Requirements
- Attachment No. 2: Legal Description
- Attachment No. 3: Project Schedule
- Attachment No. 4: Site Map
- Attachment No. 5: Project Budget (Development Budget)
- Attachment No. 6: Scope of Development
- Attachment No. 7: Declaration of Affirmative Land Use Restrictive Covenants
- Attachment No. 8: Promissory Note
- Attachment No. 9: Deed of Trust
- Attachment No. 10: Insurance Specifications
- Attachment No. 11: Affirmative Marketing
- Attachment No. 12: Borrower's Certification
- Attachment No. 13: Certificate of Completion (including Exhibit A – Legal Description)

9.21 Waivers and Amendments

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or Borrower, and no amendments will be effective unless in writing and signed by the appropriate authorities of the parties hereto.

9.22 Term of this Agreement

Unless terminated in accordance with the express terms of this Agreement, the covenants of Borrower and other provisions of this Agreement pertaining to the HOME and HOME-ARP Program will remain in full force and effect from the date hereof until expiration of the Period of Affordability.

9.23 Program Income and Reversion of Assets

Borrower may retain any Program Income (as defined in 24 CFR § 92.2), to be used to provide affordable housing pursuant to the terms of this Agreement or to provide other affordable housing for QP households and low income households, as required by 24 CFR §92.503 and §92.504. Borrower will transfer to the City all HOME and HOME-ARP funds in its possession upon termination or expiration of this Agreement.

9.24 References to Applicable Laws, Regulations and Orders

All cites or references to statutes, regulations and orders include any amendments.

9.25 Counterparts

This Agreement may be executed in several counterparts, all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the same counterpart.

[Signature page follows]

