

DEVELOPER AGREEMENT

between

TOWN OF GILBERT

and

for the

Home Investment Partnerships Program

(HOME) Contract No. _____

THIS DEVELOPER AGREEMENT IS MADE this ____ day of _____, 2019 (this “Agreement”), by and between the **Town of Gilbert**, hereinafter referred to as “GILBERT”, and _____, a/an _____, hereinafter referred to as “DEVELOPER”, and which is located at: _____. GILBERT and DEVELOPER are sometimes referred to in this Agreement collectively as the “Parties”, or individually as a “Party”.

This Agreement shall remain in effect until June 30, 2020, unless sooner terminated, extended or otherwise amended in accordance with the terms of this Agreement. GILBERT may, in its sole discretion elect to extend the term of this Agreement for up to four (4) consecutive one-year periods following the foregoing date, contingent upon the availability of HOME Funds.

RECITALS:

WHEREAS, GILBERT is the recipient of HOME Investment Partnerships Program Funds (“HOME Funds”) awarded by the U.S. Department of Housing and Urban Development (“HUD”).

WHEREAS, in 2019, GILBERT published a Request for Qualifications (“RFQ”) to implement a permanent affordable rental home program utilizing HOME Funds to increase the affordable housing stock within Gilbert. DEVELOPER was named the qualified bidder of the RFQ process to implement GILBERT’s permanent affordable rental home program.

WHEREAS, DEVELOPER has submitted a proposal for use of HOME Funds for an eligible project under HOME regulations.

WHEREAS, DEVELOPER is being awarded this Agreement to provide permanent affordable rental housing units in Gilbert, Arizona using HOME Funds awarded to GILBERT

by HUD, as authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 that would include the acquisition, rehabilitation and rental of up to one to two (1-2) single family dwelling units to qualified low to moderate income renters in Gilbert. The \$_____ of HOME Funds provided to DEVELOPER under this agreement include \$_____ of FY 20____-20____ HOME Funds and \$_____ of FY 20____-20____ HOME Funds allocated to GILBERT through its participation in the Maricopa County HOME Consortium.

AGREEMENTS:

NOW, THEREFORE in consideration of the mutual covenants and obligations herein contained, including the Attachments, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

SECTION I-GENERAL CONDITIONS

1. Title and paragraph headings are for convenient reference and are not a part of this Agreement.
2. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall rule.
3. No waiver or breach of any provision of this Agreement shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
4. GILBERT's failure to act with respect to a breach by the DEVELOPER does not waive its right to act with respect to subsequent or similar breaches. The failure of GILBERT to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
5. The parties hereto agree that this Agreement shall be construed and enforced according to the laws of the State of Arizona.
6. Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Arizona or GILBERT, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.
7. The obligations undertaken by DEVELOPER pursuant to this Agreement shall not be delegated or assigned to any other person or agency unless GILBERT shall first consent to the performance or assignment of such service or any part thereof by another person or agency.

8. The Agreement shall be binding upon the parties hereto, their heirs, executors, legal representative, successors and assigns.

A. **DEFINITIONS**

As used throughout this Agreement, the following terms shall have the following meanings:

1. **“Agreement”** means this Agreement entered into between GILBERT and the DEVELOPER, including Exhibits listed therein. It includes all formal changes to any of those documents by addendum, change order, or other modification.
2. **“Contract Administrator”** means the staff person administering this Agreement on behalf of GILBERT.
3. **“Developer”** means the for-profit or private nonprofit individual or entity identified in the preamble of this Agreement that GILBERT provides HOME Funds to for the purpose of (1) acquiring homes and residential properties to rehabilitate for use of permanent affordable rentals and (2) rehabilitating and renting housing for use of permanent affordable rental purposes.
4. **“Developer Fee”** means the amount of money GILBERT agrees to pay and the DEVELOPER agrees to accept as payment in full for project completion.
5. **“Eligible Costs”** means costs for the activities specified in Attachment A for which HOME Funds are budgeted, provided that such costs are incurred in connection with the activity which is eligible under the HOME Program and conform to all HOME Program requirements.
6. **“Environmental Requirements”** means the requirements described in 24 CFR Part 58.
7. **“Eligible Renter”** means an individual who meets income and other requirements as defined in 24 CFR Part 92.
8. **“HUD”** means the U.S. Department of Housing and Urban Development.
9. **“HOME Program”** means the HOME Investment Partnership Program as defined in 24 CFR Part 92 as it currently exists and as it may be modified in the future.
10. **“HOME Funds”** means funds made available under 24 CFR Part 92 through allocations and reallocations, plus all repayments and interest or other return on investment of these funds.
11. **“HOME-assisted Unit”** means those units designated as HOME-assisted pursuant to 24 CFR Part 92.
12. **“Low and Moderate Income”** means a household whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD.

13. **“Very Low Income”** means a household whose annual household income does not exceed 50 percent of the median income for the area, as determined by HUD.
14. **“Period of Affordability”** means the number of years during which the property is subject to HOME requirements as specified herein.
15. **“Program Income”** means the income received by the DEVELOPER or GILBERT directly generated from the use of HOME Funds or matching contributions, including proceeds from the sale of real property acquired, rehabilitated or constructed with HOME Funds.
16. **“Project”** means the entire project, whether construction or rehabilitation of HOME-assisted units, which is provided for in whole or in part under this Agreement.
17. **“Project Completion”** means that all necessary title transfer requirements and construction work have been performed; the Project complies with the HOME Program requirements; the final drawdown has been disbursed; and all project completion information has been delivered to GILBERT, as provided for under this Agreement.
18. **“SOQ”** means the DEVELOPER’s response to GILBERT’s HOME Request for Qualifications or such other submittals, and any amendments thereto.
19. **“Records”** means all pertinent books, documents, papers, accounts, reports, files, applications, sales contracts, waiting lists, income examinations, and all other records relating to the Project.
20. **“Work”** means the services and activities enumerated in Exhibit A of this Agreement.

B. PURPOSE

The purpose of this Agreement is to provide HOME funding from GILBERT to the DEVELOPER for the acquisition and rehabilitation of one to two single-family housing units for rental units to eligible low-income households. All work tasks performed under this contract shall be performed in essentially the same manner proposed in the developer’s SOQ as received by GILBERT on _____, 20___. The developer’s SOQ is considered to be a part of this agreement and is hereby incorporated by reference.

C. USES OF FUNDS

The DEVELOPER shall use HOME Funds under this agreement for the purpose of acquisition and rehabilitation of single-family housing units for the use of permanent affordable rental homes. Development costs include the actual cost of acquisition and rehabilitation, demolition of existing structures upon prior written approval of GILBERT, on-site improvements in keeping with the improvements of standard surrounding properties, carrying costs, and related soft costs including but not limited to financing fees, affirmative and fair marketing, staff and overhead costs directly related to carrying out the project (project-specific costs), and developer fees.

D. HOME PROJECT REQUIREMENTS

1. Eligible Properties. The DEVELOPER shall use HOME Funds only to acquire properties approved by GILBERT. Eligible properties:
 - a) Must be located in the HOME Target Area identified in the DEVELOPER’S proposal based on the housing market analysis provided by the DEVELOPER.
 - b) Must receive environmental clearance from GILBERT prior to acquisition. Except that the developer may execute a purchase option subject to environmental clearance.
 - c) Must have only one dwelling unit on site; acquisition of two-family or other mixed owner-rental properties require GILBERT advance approval in writing and compliance with HOME rental restrictions.
 - d) Must be unoccupied or meet the voluntary sale requirements of the Uniform Relocation Act.
2. Property Standards - The DEVELOPER will carry out all HOME-assisted activities in accordance with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties, including compliance with 24 CFR 92.251 as relates to Property Standards and Housing Quality Standards (HQS), Accessibility Standards under 24 CFR 92.251(a) (3) as applicable.

E. EXPENDITURE AND OBLIGATION REQUIREMENTS

1. The DEVELOPER agrees to expend 100% of HOME Funds under this agreement no later than _____, 20__ and according to the following schedule:

50% of HOME Funds expended and drawn by _____, 20__

75% of HOME Funds expended and drawn by _____, 20__
2. The DEVELOPER agrees to identify all properties to be assisted under this agreement no later than _____, 20__. The following obligation standards shall be applied to units acquired under this Agreement:
 - a) Funds for property acquisition are obligated by the DEVELOPER entering into a valid purchase and sales agreement with the seller of the property in compliance with all HOME requirements.
 - b) Funds for rehabilitation are obligated by completing a detailed set of plans and specifications (work write-up) and completing a detailed construction/rehabilitation cost estimate based

upon those specifications. Such cost estimate may include a contingency for construction change orders of up to 15% for rehabilitation and up to 5% for new construction.

- c) For a property that has met the requirements above, the total obligation amount will include the per-unit or prorated estimates of soft costs, developer fee and selling costs based on the cost assumptions in Attachment A.
 - d) DEVELOPER must report fund obligations on a monthly basis or when requests for reimbursements are made, whichever occurs sooner.
3. If DEVELOPER does not meet the expenditure or obligation dates, the DEVELOPER shall submit to GILBERT, a written plan specifying the actions that will be taken to bring the project into compliance, including anticipated obligation and expenditure dates. GILBERT shall make the final decisions as to what action to take, including but not limited to granting an extension of time for completion of the work, cancellation of this agreement, recapture of a portion or all of the HOME Funds provided under this agreement. In no case may GILBERT provide extensions beyond deadlines imposed by HUD.

F. AFFORDABILITY REQUIREMENTS

1. The housing that is acquired with HOME Funds must be single family dwelling-unit. The household renting the housing must qualify as low- or moderate- income and maintain the housing as the principal residence throughout the Period of Affordability, which shall be for a period of 15 years in accordance with HOME Program requirements.
2. Recapture provisions will be used to ensure compliance with the period of affordability required by HUD at 92.254 of the HOME regulation.
3. DEVELOPER will ensure HOME Funds be secured by a Promissory Note (Attachment C) and Deed of Trust (Attachment D) securing the HOME investment and naming GILBERT as beneficiary.
4. DEVELOPER must enter into a lease with the tenant in all HOME assisted units that comply with HOME regulation 92.253.
5. Units assisted under this agreement must be affordable to low-income renters. Renter's monthly rent shall not exceed the maximum HOME rent limits determined under HOME regulations 92.252. DEVELOPER is responsible for housing expenses which may include principal, interest, property taxes, home insurance, and HOA fees.
6. The income of each tenant must be determined initially in accordance with 92.203(a)(1)(i).

G. OUTREACH ACTIVITIES

1. DEVELOPER will engage in various outreach activities to recruit potential renters, verify income eligibility, and provide supportive human services during renter's tenancy.

2. DEVELOPER will follow affirmative marketing guidelines established by the Maricopa County HOME Consortium whenever marketing projects consisting of five or more units to ensure outreach to those least likely to apply for project occupancy.

H. METHOD OF PAYMENT

GILBERT agrees to reimburse the DEVELOPER for the acquisition and rehabilitation costs for eligible properties upon submission of a proper request for payment, including supporting documentation. The final request for payment shall be submitted to GILBERT no later than 30 days before _____, 20____, in order to meet federal grant requirements. Funds spent after this date shall not be reimbursed. Payment shall be made using the following procedures:

1. Prior to each close of escrow, the developer will provide to GILBERT the estimated settlement statement, sales contract and copy of home inspection.
2. Each HOME-eligible property will be acquired using DEVELOPER's resources (cash and/or loans) and/or project proceeds, if any.
3. During the development process DEVELOPER will pay for rehabilitation, and other related and allowable development costs using DEVELOPER's resources.
4. DEVELOPER will receive payment for its total development costs, including the agreed upon developer fee, at the time of the unit being eligible for tenant occupation. DEVELOPER must submit non-federal match contribution to the purchase and rehabilitation of the unit and Certification of Match.
5. Payments will be made for eligible HOME related expenses actually incurred by the DEVELOPER, and will not exceed actual cash requirements. In addition, GILBERT reserves the right to liquidate funds available under this contract for costs incurred by GILBERT on behalf of the DEVELOPER.
6. Payment of HOME Funds by GILBERT to DEVELOPER in response to DEVELOPER'S request for reimbursement shall be made upon receipt from the developer of a properly executed Note and a Deed of Trust if for initial acquisition.
7. GILBERT reserves the right to inspect records and project sites to determine that reimbursement and compensation requests are reasonable. GILBERT also reserves the right to hold payment until adequate documentation has been provided and reviewed.
8. Project expenses (excluding developer fee) shall be paid based on vouchers for actual expenses incurred or paid. Requests for payment must be submitted by the DEVELOPER on forms specified by GILBERT, with adequate and proper documentation of eligible costs incurred in compliance with 92.206 and necessary for HUD IDIS disbursement requirements. All such expenses shall be in conformance with the approved project budget. Budget revision and approval shall be required prior to payment of any expenses not conforming to the project budget as indicated in Attachment A.

9. The DEVELOPER may submit a final invoice upon completion of all work under this agreement. Final payment shall be made after GILBERT has determined that all services have been rendered, files and documentation delivered, and units have been placed in service in full compliance with HOME regulations.

I. GRANT ADMINISTRATION

In accordance with federal regulations, including 24 CFR 92, GILBERT is responsible for ensuring the administration of HOME Program funds in accordance with all program requirements, including but not limited to:

1. Inspections - Conducting progress inspections of work completed and review of project files and information to protect its interests as lender and regulatory authority for the project, and will provide information to the DEVELOPER regarding any progress inspections or monitoring to assist it in ensuring compliance. GILBERT's review and approval of the WORK will relate only to overall compliance with the general requirements of this Agreement and HOME requirements, and all regulations and ordinances.
2. Disbursements- Managing all draws of HOME Funds from HUD and payment of valid and properly documented draw requests from DEVELOPER, disbursing funds to the developer, and clearly and promptly describing any identified deficiencies that prevent a disbursement or portion of a disbursement from being approved.
3. Reporting to Maricopa County via IDIS in a manner as required by the Maricopa County Consortium.
4. Furnishing the DEVELOPER with information regarding requirements for the project, including any changes in HOME regulations or program limits that affect the project, including but not limited to income limits.
5. Monitoring the DEVELOPER for compliance with the HOME requirements through reports and on-site visits.

J. FINANCIAL RECORDS

1. DEVELOPER's accounting system and financial records shall comply with the applicable requirements and standards of 24 CFR Part 84. Such systems shall be subject to monitoring from time to time by GILBERT or by the Department of Housing and Urban Development (HUD).
2. DEVELOPER shall adhere to applicable audit requirements as described and in accordance with OMB Circular A-133 and 24 CFR 84.21 Standards for Financial Management Systems. In addition, all developers must provide annual audited financial statements or required single audit reports as applicable.
3. DEVELOPER shall adhere to the repayment of investment requirements set forth in 24 CFR §92.503. Any HOME Funds invested in housing that does not meet the affordability

requirements for the period specified in § 92.254, must be repaid in accordance with 24 CFR § 92.503(b)(3).

4. DEVELOPER shall adhere to procurement procedures established pursuant to 24 CFR 84.40 through 84.48, which shall ensure that materials and services are obtained in a cost-effective manner.

K. PROJECT PROCEEDS

All proceeds generated from DEVELOPER development activities shall be considered project proceeds and subject to the project proceeds requirements set forth in HOME Program regulations. Project proceeds shall be tracked by the DEVELOPER. Documentation supporting the amount of project proceeds received and expended shall be submitted on the periodic progress report, if requested by GILBERT. Project proceeds shall be retained and expended by the DEVELOPER to acquire additional properties under this agreement. The DEVELOPER shall return any project proceeds to GILBERT upon expiration of this agreement and final report.

L. RECAPTURED FUNDS

All funds recaptured because housing no longer meets affordability requirements, shall be forwarded to GILBERT in accordance with 24 CFR § 92.503.

M. REPORTS/RECORD RETENTION

1. Project Reports - Reports as required or requested by GILBERT shall be submitted not less than quarterly. Such reports include, as appropriate, project setup/completion report, quarterly progress reports, project proceed reports, MBE/WBE information, program income reports, match reports, performance reports and other HUD required reporting data. Progress reports shall include acquisition, rehabilitation and tenant eligibility data. The DEVELOPER shall collect and maintain project beneficiary information pertaining to household size, income, race, and the presence of female headed households in order to determine low and moderate income benefit in a cumulative and individual manner as required by HUD.
2. Access- GILBERT and the United States Government and/or their representatives shall have access for purposes of monitoring, auditing, and examining performance, to books, documents and papers, and the right to examine records. However, nothing herein shall be construed to require access to any privileged or confidential information as set forth in federal or state law.
3. Administration (Records/Reports and Incorporation by Reference): Pursuant to 24 CFR§92.508 and all referenced sections the DEVELOPER shall maintain records for six (6) years after all HOME requirements have been satisfied; and shall submit to GILBERT upon request, the following records and reports:
 - a) Records demonstrating that participating citizens served under this Contract meet the income and other criteria required by federal law and that no unlawful discrimination occurs in the solicitation or selection process of lower income persons or group;

and that no conflict of interest exists. Records pertaining to income eligibility, property standards, affordable rents, lease requirements and affirmative marketing activities must be kept on a continuing basis throughout the period of affordability.

- b) Project Closeout- The DEVELOPER's obligation to GILBERT shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, accounting for use of funds, provision of all reports and records required by GILBERT.

N. ENVIRONMENTAL CONDITIONS

1. The DEVELOPER agrees to comply with: the National Environmental Policy Act of 1969 (P.L. 91-190) pursuant thereto 40 CFR Parts 1500 – 1508; Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities pursuant thereto Title 24, CFR Part 58, Subpart A; CPD Notice 01-11 HOME Environmental Review Requirements and with all conditions required in the process of the environmental assessment.
2. Air and Water- The DEVELOPER agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:
 - a) Clean Air Act, 42 USC, 7401, et seq., as amended.
 - b) Federal Water Pollution Control Act, as amended, 33 USC 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in said Section 114 and Section 308 and all regulations and guidelines issued thereunder.
 - c) Environmental Protection Agency (EPA) regulations pursuant to 40 CFR part 50, as amended.
 - d) DEVELOPER agrees to comply with conditions set forth by the Air Pollution Division of Maricopa County Environmental Services or other County agency, as required.
3. Flood Disaster Protection - In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the DEVELOPER shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes. (In the case of housing, the homeowner must obtain and maintain flood insurance as a condition of funding, or funds may not be utilized.)
4. Historic Preservation - The DEVELOPER agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 USC 470) and the procedures set forth in 36 CFR part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the

performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Office for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that is listed or eligible for the National Register of Historic places, or included on any state or local historic property inventory or any archaeological findings.

O. THE DEVELOPER AGREES TO:

1. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, familial status, age or disability. DEVELOPER shall take affirmative action to insure that applicants for employment and employees during employment are treated without regard to their race, color, religion, sex, national origin, familial status, age or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training including apprenticeship.
2. Not discriminate against any applicant for service because of race, color, religion, sex, national origin, familial status, age or disability in the admission or access to, or treatment in, its federally assisted programs or activities. DEVELOPER shall, in all solicitations or advertisements, state that all qualified applicants shall receive consideration for service without regard to race, color, religion, sex, national origin, familial status, age or disability. DEVELOPER agrees to post in conspicuous places available to employees and applicants for employment or service, notices setting forth the provisions of these non-discrimination clauses. All developers shall administer all services in accordance with the Civil Rights Act of 1968 and the Fair Housing Amendment Act of 1988 and Executive Order 13166 entitled "Improving Access to Services for Persons with Limited English Proficiency" pursuant to Title VI of the Civil Rights Act.
3. During the term of this Contract, indemnify, hold, protect and save harmless GILBERT and any and all of its officers, agents, and employees from and against any and all actions, audits, proceedings, claims and demands, loss, liens, costs, expense and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by GILBERT, brought, made, filed against, imposed upon or sustained by GILBERT, its officers, agents, or employees in and arising from or attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations conducted by the DEVELOPER, its officers, agents or employees, or by any person or persons acting on behalf of DEVELOPER and with DEVELOPER's knowledge and consent, expressed or implied.
4. Give all notices and comply with all Laws, ordinances, rules, building codes, regulations and lawful orders of any public authority bearing on the performance of activities pursuant to this Contract. If the DEVELOPER observes that any of the contract documents are in conflict with any laws, statutes, building codes and/or regulations, it shall promptly notify GILBERT, in writing, and any necessary changes shall be accomplished by appropriate written modification.

5. Should the DEVELOPER perform any work contrary to applicable laws, ordinances, rules, building codes and/or regulations, it shall assume full responsibility, therefore, and shall bear all cost incurred due to its negligence. Any dispute not disposed of by mutual contract by the parties hereto shall be decided in accordance with the applicable Arizona laws, ordinances, and codes of the state and local governments.
6. Comply with and require all contractors and subcontractors to comply with all of the applicable provisions of the HOME Program. All contractors and subcontractors who perform service pursuant to this Contract shall be in compliance with all applicable state and local licensing, bonding, and insurance requirements. None of the terms, conditions, and requirements covered by this Contract can be assigned.
7. Acknowledge the contribution of the HOME Program in all published literature, brochures, programs, flyers, etc., during the term of the Contract.
8. Execute and abide by Certifications mandated by FEDERAL GRANT requirements listed in Attachment F- HOME CERTIFICATIONS.
9. Obtain and comply with the most recent HUD-issued applicable HOME Program Rent Limits, Income Limits, Mortgage Limits and Maximum per Unit Subsidy Limits throughout the period of affordability.
10. Comply with HOME conflict of interest provisions of 92.356, which apply to the award of contracts under the agreement and the selection of households that will occupy HOME-assisted units.

P. THE DEVELOPER CERTIFIES:

1. That it possesses legal authority to execute this Contract.
2. That its governing body has duly adopted or passed as an official act, a resolution, motion, or similar action authorizing the person identified as the official representative of the DEVELOPER to execute this Contract and to comply with the terms of this Contract.
3. That it is familiar with and shall comply with 24 CFR Part 92 governing activities funded with HOME dollars.
4. That neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
5. That the project shall be carried out and services administered in compliance with all federal and state laws and regulations as follows:
6. The parties to this Contract agree that they will utilize and make available the HOME Funds in conformity with the non-discrimination and equal opportunity requirements set out in the HUD regulations in the National Housing Affordability Act. These

regulations listed in 24 CFR 92.350-92.454 include:

- a) The requirements of the Fair Housing Act, 42 CFR 3601-20, and implementing regulations at 24 CFR Part 100: Executive Order 11063 (Equal Opportunity in Housing) as amended by Executive Order 12259 (3 CFR, 1958-1963 Comp., p.652 and 3 CFR, 1980 Comp. p. 307) and implementing regulations at 24 CFR 107: and Title VI of the Civil Rights Act of 1964, 42 U. S. C. 2000d, and implementing regulations at 24 CFR Part 1 (Nondiscrimination in Federally Assisted Programs);
 - b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and the regulations at 24 CFR 146;
 - c) The prohibitions against discrimination on the basis of handicap under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
 - d) The requirements of the Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;
 - e) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1702u (Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Projects);
 - f) The requirements of Executive Orders 11625 and 12432 regarding Minority Business Enterprise, and 12138 regarding Women's Business Enterprise, and regulations S. 85.36 (e) and of section 281 of the National Housing Affordability Act; and
 - g) The requirements of Executive Order 13166 entitled "Improving Access to Services for Persons with Limited English Proficiency" pursuant to Title VI of the Civil Rights Act.
7. The parties to this Contract agree that they will prepare and adopt acceptable procedures and requirements for affirmatively marketing units in the HOME projects, when HOME assisted housing contains 5 or more rental units, by providing information about the availability of HOME-assisted units that are vacant at the time of completion or that later become vacant. The parties agree that they will make good faith efforts to provide information and to otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market to the available housing during the period of affordability. These procedures and requirements are not applicable when units are occupied by families referred from a Public Housing Authority's (PHA) waiting list, or to families receiving tenant-based rental assistance provided from HOME Funds.
 8. GILBERT, as the participating jurisdiction, assumes all the responsibilities for environmental review, decision making, and action under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321) and the other provisions of the law that would apply to HUD were HUD to undertake such projects as Federal projects in

accordance with 24 CFR Part 58. The CITY will assume the responsibilities for the Request for Release of Funds, if applicable. The DEVELOPER agrees not to commit or incur any expenditure for HOME activities until this environmental review process has been completed. The parties further agree that the provision of any funds to the project is conditioned on GILBERT'S determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. Should it be determined that the DEVELOPER has incurred expenses in violation of the NEPA requirements, the DEVELOPER will be responsible for the full costs of expenditures and repayment of any related reimbursement. The DEVELOPER agrees to provide all necessary assistance to GILBERT in completing this environmental review process.

9. The parties to this Contract agree to abide by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4291-4655) and the governmental implementing regulations at 49 CFR Part 24 as they apply to this HOME Program.
10. The parties to this Contract agree to abide by the Davis-Bacon Act (40 U.S.C. 276a-5) and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), and the provisions of 24 CFR Part 24 regarding Government-wide Debarment and Suspension as they apply to this HOME Program.
11. The parties to this Contract agree to abide by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) as they apply to HOME Program.
12. The Parties to this contract agree to abide by the Drug-Free Workplace Act of 1988 as it applies to this HOME Program.
13. Housing assisted with HOME Funds constitutes HUD-assisted housing for the purposes of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is therefore subject to 24 CFR Part 35.
14. No person who is an employee, agent, consultant, officer or elected official, or appointed official who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME Funds or who is in a decision making position or who will gain from inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, either for themselves or those whom they have family or business ties, during their tenure or for one year thereafter.
15. No owner, developer or sponsor of a project assisted with HOME Funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (DEVELOPER) when acting as an owner, developer or sponsor) may occupy a HOME assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME Funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

16. HOME Funds may not be used for operations or modernization of public housing projects financed under the Housing Act of 1937.
17. The DEVELOPER warrants that it is in compliance with A.R.S. §41-4401 and further acknowledges:
 - a) That the DEVELOPER and its subcontractors, if any, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214, subsection A;
 - b) That a breach of a warranty under subsection a above, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract;
 - c) That the contracting government entity retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty provided under subsection a above and that the contractor agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection; and
 - d) That nothing herein shall make any contractor or subcontractor an agent or employee of the contracting government entity.
 - e) That DEVELOPER shall comply with all other applicable laws.

Q. GILBERT AGREES TO:

1. Complete all Environmental Reviews (ERs) in a timely manner.
2. Provide Technical Assistance to DEVELOPER on a continuing basis.
3. Approve all requests for reimbursement, review all requests for Contract amendments and make recommendations thereof in a timely manner.
4. Monitor timely implementation of DEVELOPER's project including encumbrance obligation. Make recommendations for compliance.
5. Be the lien holder for all real estate developed, if applicable.

R. ACTIVITY COMPLETION:

1. Upon the final payment to the DEVELOPER by GILBERT, the HOME activity shall be considered complete. Upon completion of the scope of work, all unspent HOME resources shall be returned to GILBERT for reallocation. The DEVELOPER shall continue to be responsible for compliance activities for the period of affordability as required by the HOME Program.

2. The DEVELOPER shall provide an annual report to GILBERT that details the status of each property, including owner occupancy, any refinancing or lien activity, and if a resale has occurred evidence that the subsequent purchaser meets HOME Program requirements.

S. GENERAL PROVISIONS:

1. It is expressly understood by the parties hereto that this Contract has been negotiated and executed in anticipation of receipt of funds by GILBERT from the U.S. Department of Housing and Urban Development (HUD) pursuant to the HOME Program and that therefore, the terms, conditions and sums payable under this Contract are subject to any changes or limitations which may be required by HUD and the HOME Program regulations. Notwithstanding any other provisions of this Contract, any payment to DEVELOPER by GILBERT under this Contract is contingent upon the actual receipt of funds from HUD.
2. All written communication between the DEVELOPER and GILBERT shall be sent to Contract Contact Persons:

DEVELOPER: _____
Name/Title: _____
Address: _____
Phone: _____
Fax: _____
Email: _____

GILBERT: Town of Gilbert
Name/Title: 50 E. Civic Center Drive
Address: Gilbert, AZ 85296
Phone: _____
Fax: _____
Email: _____

3. Both parties acknowledge that no member of the governing body of, or any employee, of GILBERT who exercises any functions or responsibilities in connection with the carrying out of the project to which this Contract pertains has any personal interest direct or indirect in this Contract.
4. This Contract supersedes any and all other contracts and no other contract or amendment hereto shall be effective unless executed in writing and signed by GILBERT, and DEVELOPER. GILBERT or the DEVELOPER may request changes. If approved by GILBERT, any such request shall be incorporated into written amendments to this Contract.
5. This Contract shall be governed by and construed in accordance with the laws of the State of Arizona and all applicable federal laws and regulations.
6. The invalidity in whole or in part of any provision of this Contract shall not void or

affect the validity of any other provision of this Contract.

7. This Contract constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, representations, statements and undertakings are hereby expressly cancelled.
8. GILBERT may, at any time, by written order, make changes within the general scope of this Contract in any one or more of the following areas:
 - a) Work Statement activities reflecting changes in Federal, State, GILBERT regulations, policies or requirements;
 - b) Administrative requirements such as changes in reporting periods, frequency of reports, or report formats required by Funding Source or GILBERT regulations, policies or requirements. It is the responsibility of the DEVELOPER to ensure the latest documents are consulted and followed.

T. INSURANCE REQUIREMENTS:

1. DEVELOPER, at DEVELOPER's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed companies in the State of Arizona with policies and forms satisfactory to GILBERT.
2. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of GILBERT, constitute a material breach of this Contract.
3. The DEVELOPER's insurance shall be primary insurance as respects to GILBERT, and any insurance or self-insurance maintained by GILBERT shall not contribute to it.
4. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect GILBERT.
5. The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to GILBERT under such policies. The DEVELOPER shall be solely responsible for the deductible and/or self-insured retention and GILBERT, at its option, may require the DEVELOPER to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
6. GILBERT reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. GILBERT shall not be obligated, however, to review such policies and/or endorsements or to advise DEVELOPER of any deficiencies in such policies and endorsements, and such receipt

shall not relieve DEVELOPER from, or be deemed a waiver of GILBERT's right to insist on strict fulfillment of DEVELOPER's obligations under this Contract.

7. The insurance policies required by this Contract, except Workers' Compensation, shall name GILBERT, their agents, representatives, officers, directors, officials and employees as additional insureds.
8. The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of DEVELOPER's work or service.
9. Commercial General Liability. DEVELOPER shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage shall be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof.
 - a) The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision that would serve to limit third party action over claims.
 - b) The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 11 85, and shall include coverage for DEVELOPER's operations and products and completed operations.
10. Automobile Liability. The DEVELOPER shall maintain Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to DEVELOPER's vehicles (whether owned, hired, non-owned), assigned to or used in the performance of this Contract.
11. Workers' Compensation. The DEVELOPER shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of DEVELOPER's employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.
12. Professional Liability. The DEVELOPER retained by the CITY to provide the work or service required by this Contract shall maintain Professional Liability insurance covering negligent acts, errors, or omissions arising out of the work or services performed by the DEVELOPER, or any person employed by the DEVELOPER, with a limit of not less than \$1,000,000 each claim.

13. Certificates Of Insurance

- a) Prior to commencing work or services under this Contract, DEVELOPER shall furnish GILBERT with Certificates of Insurance, or formal endorsements as required by the Contract, issued by DEVELOPER's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number and title.
- b) In the event any insurance policy(ies) required by this Contract is/are written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the DEVELOPER's work or services and as evidenced by annual Certificates of Insurance.
- c) If a policy does expire during the life of the Contract, a renewal certificate must be sent to GILBERT fifteen (15) days prior to the expiration date.

14. Self-Insurance

In lieu of any insurance requirements in this contract, GILBERT understands that the DEVELOPER may be self-insured, and GILBERT accepts this self-insured program. (This acceptance is based upon the DEVELOPER'S representation of its financial strength, including its most recent Balance Statement and Statement of Cash Flow or Revenue. DEVELOPER agrees to timely notify GILBERT as to any substantial change in its financial strength.)

15. Cancellation And Expiration Notice

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to GILBERT.

U. REVERSION OF ASSETS:

1. Upon expiration of this Contract, the DEVELOPER shall transfer all remaining funds or other assets relating to the HOME Investment Partnerships Program to GILBERT. A written letter of intent to terminate must be submitted to GILBERT a minimum of 30 days prior to termination of Contract. All unencumbered funds as of the date specified in the "Contract Term" paragraph (on page one) of this Contract shall be reallocated GILBERT per Reallocation Policy.
2. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84, which include but are not limited to the following:
 - a) DEVELOPER shall transfer to GILBERT any HOME Funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination, unless otherwise specified.
 - b) Real property under DEVELOPER'S control that was acquired or improved, in whole

or in part, with funds under this Agreement shall be used in accordance with the HOME application for the period consistent with the continued affordability requirements.

3. In the event that DEVELOPER declares bankruptcy or closes operation for any reason, all assets including real property and equipment which were acquired, in whole or in part, with funds under this Agreement shall revert back to GILBERT.

V. SUSPENSION AND TERMINATION:

1. In accordance with 24 CFR 85.43, GILBERT may suspend or terminate this Contract if DEVELOPER violates any term or condition of this Contract or if DEVELOPER fails to maintain a good faith effort to carry out the purpose of this Contract. In the event of such termination or suspension, all funds awarded to developer pursuant to this agreement shall immediately be deemed revoked and canceled. In the event of termination, developer shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to the date of termination.
2. GILBERT or DEVELOPER may terminate this Contract for convenience in accordance with 24 CFR 85.44. Both parties shall agree upon the termination conditions including the effective date of the termination. The party initiating the termination shall notify the other party in writing stating the reasons for such termination.
3. This Contract is subject to termination pursuant to A.R.S. §38.511.

SECTION II- HOME CERTIFICATIONS

In accordance with the provisions of the Home Investment Partnerships Act and with 24 CFR 92.150 of the Home Investment Partnership Program Rule, the DEVELOPER certifies that:

- A. Before committing any funds to a project, The DEVELOPER will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME Funds in combination with other Federal assistance than is necessary to provide affordable housing;
- B. The DEVELOPER will only utilize HOME funds to pay for eligible activities and costs of those activities permitted in 24 CFR 92.205 through 92.209.
- C. The DEVELOPER will NOT utilize HOME Funds to pay for activities prohibited under 24 CFR 92.214, including capital and operating funds for Public Housing.
- D. The submission of the program description is authorized under State and local law (as applicable), and that the DEVELOPER possesses the legal authority to carry out the Home Investment Partnership (HOME) Program, in accordance with the HOME regulations;

- E. The DEVELOPER will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR Part 24 and the requirements of 24 CFR 92.353;
- F. The DEVELOPER will comply with Section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.
- G. The DEVELOPER will use HOME Funds pursuant to its Consolidated Plan(s) approved by HUD and all requirements of 24 CFR Part 92;
- H. The DEVELOPER will provide a drug-free workplace by:
 - 1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - 2. Establishing an ongoing drug-free awareness program to inform employees about:
 - a) The dangers of drug abuse in the workplace;
 - b) The participating jurisdiction's policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - 3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);
 - 4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will:
 - a) Abide by the terms of the statement; and
 - b) Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - 5. Notifying the AGENCY in writing, within ten calendar days after receiving notice under paragraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal AGENCY has designated a central point

for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
 - a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State, or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

I. To the best of its knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of GILBERT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative contract;
2. 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative contract, the DEVELOPER will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. The DEVELOPER will require that the language of paragraph (H) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative contracts) and that all Subcontractors shall certify and disclose accordingly.

SECTION III – ATTACHMENTS

- | | |
|---|--|
| A | Scope of Work |
| B | Work Statement |
| C | HOME Project Secured Promissory Note |
| D | HOME Project Deed of Trust and Assignment of Rents |
| E | MATCH Certification |
| F | State Contractor Employment Verification Form |

G HOME Certifications

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

DEVELOPER:

TOWN OF GILBERT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Town Attorney

ATTEST:

Town Clerk

EXHIBIT A

SCOPE OF WORK

Contractor shall perform the following services and adhere to the federal regulations of HOME Investment Partnership Funds as follows:

- Contractor will purchase 1-2 vacant dwelling units within Gilbert Town limits;
- Contractor will take title of the dwelling unit(s) upon close of escrow, naming the Town of Gilbert as a second lien holder;
- Contractor will rehabilitate dwelling units to meet Housing Quality Standards as described in 24 CFR 92.251 and maintain dwelling units to the standard during the period of affordability;
- Contractor will be responsible for all maintenance, insurance and expenses incurred on behalf of the dwelling unit(s) acquired under the agreement;
- Contractor will rent dwelling units as permanent affordable rental homes to qualified low- to moderate- income households whose annual household income does not exceed 60% of area median income.

HOME Regulations:

- Contractor must provide a 25% non-federal match to the HOME Funds utilized;
- Contractor must provide a complete housing market analysis with the proposal in accordance with HOME regulations;
- Dwelling unit(s) must be maintained as affordable rental housing for an affordability period of 15 years;
 - The appraised value of the dwelling unit(s) after rehabilitation must not exceed _____ .00;
- Contractor must adhere to annual rent controls as required by HOME fund regulations during the period of affordability.

Timeline:

- Dwelling units must be under contract for purchase by _____, 20____;
- Reimbursement requests for dwelling unit purchase and rehabilitation must be submitted by _____, 20____;
- Dwelling units must be occupied by an income eligible household by _____, 20____.

EXHIBIT B

WORK STATEMENT

Agency Name: _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____ Website: _____

DUNS#: _____ HOME Funds Request: _____

Description of activity: _____.

Specific location of proposed units: Proposed properties include: [insert address]

Beneficiaries:

Total households to be served: _____

At or below 30% of median:

At or below 50% of median:

At or below 80% of median:

Other (please specify): Below 60% AMI

Timeline:

Tasks	Start Date	Completion Date
Find _____ (2 or 3 bedroom single family-attached) housing units in Gilbert		
Complete Environmental Review process		
Bid, acquire and contract award		
Rehabilitation units to Housing Quality Standards as described in 24 CFR 92.251		
Project completion		
Tenant selection and move in		

Budget:

	HOME Amount	Cash Match	Other Resources	Total
Acquisition				
Rehabilitation				
Administrative Costs				
Developer Fees				
Other (specify)				
Other (specify)				
TOTAL				

Match:

Amount	Form of Match	Specific Source
	In-kind	Professional Services
	In-kind	Volunteer Hours
	In-kind	Family Sponsorships
	Cash	ARM support staff
	Cash	Career Development staff
	Cash	Program support staff
	Cash	Property tax abatement
Total:		

EXHIBIT C
PROMISSORY NOTE

When recorded, mail to:
Town of Gilbert
Town Manager's Office
50 E. Civic Center
Drive Gilbert, Arizona
85296

TOWN OF GILBERT HOME PROGRAM
PERMANENT AFFORDABLE RENTAL PROGRAM
SECURED PROMISSORY NOTE

\$ _____

Gilbert, Arizona

FOR VALUE RECEIVED, _____ (“Maker”) promises to pay to the Town of Gilbert, an Arizona municipal corporation (“Payee”), at 50 E. Civic Center Dr., Gilbert, AZ 85296, or at such other place as the Town may from time-to-time designate, in lawful money of the United States of America, the principal sum of PRINCIPAL SUM.

1. The sums advanced under this Note shall be used to purchase the property located at ADDRESS, Gilbert, Arizona, as more fully described in Exhibit 1 (the “Property”). Payment of this Note will be secured by a deed of trust (the “Deed of Trust”) from the Maker to Payee to be recorded against the Property.
2. The term of this Note shall be 15 years from the date written above, provided however, that no event of default under this Note shall have occurred during said term. If an event of default occurs during the term of this Note, said term shall not expire unless the default is cured as provided herein or until this Note is paid in full. Upon expiration of the term of this Note, the debt evidenced by this Note shall be forgiven.
3. Maker shall have the right to prepay this Note, in whole, without penalty, discount, or premium.
4. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within fifteen (15) days of demand; (ii) any sale, lease, exchange, conveyance, assignment, refinance or other transfer of the Property without the prior written consent of Payee; or (iii) any violation of the covenants or restrictions set forth in that certain Declaration of Affirmative Land Use Restrictive

Covenants, between Make and Payee, dated on or about the date of this Note.

5. Upon the occurrence of any event of default, or at any time thereafter, at the option of the Payee, the entire unpaid principal sum of this Note shall become immediately due and payable. This option may be exercised at any time following any such event. The failure to exercise this option shall not constitute a waiver of the right to exercise such option in any subsequent even of default. Payee's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.
6. Payee shall not exercise any right or remedy provided for herein because of any default of maker unless, in the event of a monetary default, Maker shall have failed to pay the outstanding sums within a period of thirty (30) calendar days after the date of the notice that payment was due, or in the event of a nonmonetary default, Payee shall have first given written notice thereof to Maker, and Maker shall have failed to cure the nonmonetary default within a period of thirty (30) calendar days after the date of such notice; provided that if the nonmonetary default cannot be cured within thirty (30) calendar days and Maker proceeds diligently with effort to cure such default until it shall be fully cured within no more than sixty (60) calendar days after the giving of such notice, Payee shall not exercise any right or remedy provided for herein until such sixty (60) day period shall expire. Notwithstanding the foregoing, Payee shall not be required to give any notice or allow any part of the grace period if Maker shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if Maker shall have made an assignment for the benefit of creditors, or if a receiver or trustee is appointed for Maker and such appointment or such receivership is not terminated within forty-five (45) days. With respect to any right to cure or cure period provided in this paragraph 7, performance of a cure by an entity or partner of Maker shall have the same effect as would like performance by Maker.
7. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof, or of any installment hereof, to the release of any party liable for this obligation. Any such extension or release may be made without notice to any of said parties and without in any way affecting or discharging this liability.
8. Maker shall pay immediately, upon demand, all costs and expenses of Payee, including without limitation reasonable attorney fees, for the collection of this Note upon default. Maker shall pay immediately, upon demand, all costs and expenses of Payee, including without limitation reasonable attorney's fees, if Payee seeks to have the Property abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.
9. If Payee shall be made a party to or shall reasonably intervene in any action or proceeding,

whether in court or before any governmental agency, affecting the Property or the title thereto or the interest of the Payee under the Deed of Trust, including without limitation, any form of condemnation or eminent domain proceeding, Maker shall reimburse Payee immediately upon demand for all costs, charges, and attorneys' fees incurred by payee in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Property.

10. All payments required under this Note shall be delivered to the Town of Gilbert, 50 E. Civic Center Drive, Gilbert, AZ, 85296 or such other place as the Payee notifies Maker in writing.
11. This Note shall be binding upon Maker, its successors and assigns.
12. This Note shall be construed in accordance with and be governed by the laws of the State of Arizona.
13. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
14. This Note shall be secured by a Deed of Trust on the Property executed by Maker and recorded in the Office of the County Recorder of Maricopa County, State of Arizona.

IN WITNESS WHEREOF, the undersigned has executed this Note on the date first written above:

MAKER:

By: _____

Title: _____

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 2019, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

Notary Public

My Commission Expires:

EXHIBIT 1
Legal Description

LEGAL DESCRIPTION:

EXHIBIT D
DEED OF TRUST

When recorded, mail to: Town of
Gilbert
Town Manager's Office
50 E. Civic Center Drive Gilbert,
Arizona 85296

TOWN OF GILBERT HOME
PROJECT
DEED OF TRUST AND ASSIGNMENT OF RENTS

DATE:

PROPERTY ADDRESS: _____, Gilbert,
Arizona TRUSTOR:

TRUSTOR'S MAILING ADDRESS:

BENEFICIARY: Town of Gilbert, an Arizona municipal corporation

BENEFICIARY'S ADDRESS: 50 E. Civic Center Drive, Gilbert, Arizona 85296

TRUSTEE: Christopher W. Payne, Town Attorney and a member of the State Bar of Arizona,
50 E. Civic Center Drive, Gilbert, Arizona 85296

WHEREAS, Trustor is the owner in fee simple of the residential land and improvements located thereon as Property in Maricopa County, State of Arizona, legally described as:

This Deed of Trust made between Trustor, Trustee and Beneficiary above named, WITNESSETH: That Trustor irrevocably grants, conveys, transfers and assigns to Trustee in Trust, with Power of Sale, the above-described real property and all buildings, improvements and fixtures located thereon or hereinafter erected thereon, together with the leases, rents, issues profits or income thereof (all of which are hereinafter called "property income"); SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income; AND SUBJECT TO existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

FOR THE PURPOSE OF SECURING:

- A. Performance of each agreement of Trustor herein contained.
- B. Payment of the indebtedness evidenced by that promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of \$ _____ executed by Trustor in favor of Beneficiary.
- C. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or Trustor's successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

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

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete and restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; and, do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
2. To provide, maintain and deliver to Beneficiary fire insurance policies satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured thereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.
3. To appear in and defend any action or proceeding purporting to affect the security thereof or the rights or powers of Beneficiary or Trustee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
4. To pay before delinquent, all taxes and assessment affecting said property; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust, including, without limited the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance, and all lawful charges, costs and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such

manner and to such extent as either may deem necessary to protect the security thereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note(s) secured by this Deed of Trust or at the highest legal rate, whichever be the greater rate. Any amounts so paid by Beneficiary or Trustee shall become part of the debt secured by this Deed of Trust and a lien on said premises or shall become immediately due and payable at option of Beneficiary or Trustee.

IT IS MUTUALLY AGREED:

6. That any award of damages in connection with condemnation or any such taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor; however, the right to sue therefore and ownership thereof subject to this Deed of Trust), and upon receipt of such monies Beneficiary may hold the same as such further security, or apply or release the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

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

8. That at any time or from time-to-time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement and without liability therefore, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or part of said property; (b) consent to the making and recording, or either, of any map or plat of the property or any part thereof; 9c) join in granted any easement thereon; (d) join in or consent to any extension agreement subordinating the lien, encumbrance or charge thereof.

9. That upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of the Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee shall by Deed of Release and Full Reconveyance

release and reconvey, without covenant or warranty, express or implied, the property then held hereunder. The recitals in such Deed of Release and Full Reconveyance of any matters shall be conclusive proof of the truthfulness thereof. The grantee in such Deed of Release and Full Reconveyance may be described as “The Person or Persons Legally Entitled Thereto.”

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

11. That upon default by Trustor the payment of any indebtedness hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof and of election to cause to be sold said property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, said note(s) and all documents evidencing expenditures secured hereby.

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

13. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney’s fees, Trustee shall apply the proceeds of the sale to payment of all sums then secured hereby and all other sums due, under the terms hereof, with accrued interest, and, the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. Sec. 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.

14. The purchaser at the Trustee’s sale shall be entitled to immediate possession of the

property against Trustor and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and reasonable attorney's fees. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies shall be cumulative.

15. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee here shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, right, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

16. That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

17. That Trustee accepts this Trust when this Deed of Trust duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee. In the event Trustee is made a party in any legal or court proceeding as a result of litigation between Trustor and Beneficiary or between a third party and either or both of Trustor and/or Beneficiary, the attorney's fees and costs of Trustee shall be paid by either Trustor or Beneficiary, whichever is the non-prevailing party.

18. Time is of the essence of the Deed of Trust and each and every provision hereof.

19. Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at Trustor's mailing address hereinbefore set forth. All notices required hereby shall be sent to the addresses indicated above unless such party shall have recorded a Request for Notice pursuant to A.R.S. Sec. 33-809.A in the county recorder's office of the county where the property encumbered hereby is located, indicating a different address.

20. In the event that Trustor shall sell, convey, or alienate or otherwise transfer the subject property, or any part thereof, or any interest therein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of Beneficiary being first obtained, said Beneficiary, to the fullest extent provided by law, shall have the right at its option to declare any indebtedness or obligation secured by this Deed of Trust, irrespective of the maturity date specified in the Note evidencing the same, immediately due and payable.

TRUSTOR:

By: _____

Title: _____

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ___ day of _____, 2019, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

Notary Public

My Commission Expires:

ATTACHMENT E
MATCH CERTIFICATION

(Insert Match Certification Here)

ATTACHMENT F

State Contractor Employment Record Verification Form and Employee Verification
Worksheet
To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited City/Town contract meet all conditions contained herein. Failure to complete and submit this form and attached worksheet on or before the requested date to the above cited address and/or falsification of any information provided herein shall be considered a material breach of the contract.

Contract Number/ State Agency/Division	
Name (as listed in the contract)	
Street Name and Number	
City:	Zip Code:

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees; and
3. The contractor has identified all contractor and subcontractor employees who perform work under the contract on the attached Employee Verification Worksheet and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214.

Signature of Contractor (Employer) or Authorized Designee:

Printed Name: _____

Title: _____

Date (month/day/year): _____

ATTACHMENT G
HOME CERTIFICATIONS
SPECIAL PROVISIONS

In accordance with the provisions of the HOME Investment Partnership Act and with 24 C.F.R. § 92.150 (submission requirements) of the HOME Investment Partnership Program Rule, the CONTRACTOR certifies that:

(A) Before committing any funds to an activity, the CONTRACTOR shall evaluate the activity in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME Funds in combination with other federal assistance than is necessary to provide affordable housing;

(B) The CONTRACTOR shall only utilize HOME Program funds to pay for eligible activities and costs of those activities permitted in 24 C.F.R. §§ 92.205 through 92.209 and not specifically prohibited under §92.214 (prohibited activities).

(C) The CONTRACTOR understands that tenant-based rental assistance is an element of a Consolidated Plan. However, tenant-based rental assistance must be approved as part of an original application for project funding.

(D) The submission of the program description is authorized under State and local law (as applicable), and that the CONTRACTOR possesses the legal authority to carry out the HOME Program in accordance with HOME regulations;

(E) The CONTRACTOR shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations and the requirements of 24 C.F.R. § 92.353 (displacement, relocation, and acquisition);

(F) The CONTRACTOR shall comply with Section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 C.F.R. Part 135.

(G) The CONTRACTOR shall use HOME Program funds pursuant to its Consolidated Plan(s) approved by HUD and all requirements of 24 C.F.R. Part 92 (HOME Investment Partnership Program);

(H) The CONTRACTOR shall provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the CONTRACTOR'S workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing an ongoing drug-free awareness program to inform employees about:

i. The dangers of drug abuse on the workplace;

- ii. The CONTRACTOR's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs;
and
 - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee that performs any work under this Agreement be given a copy of the statement required by subparagraph (a) above;
- d. Notifying the employee in the statement required by subparagraph (a) above that, as a condition of employment under this Agreement, the employee shall:
- i. Abide by the terms of the statement; and
 - ii. Notify the CONTRACTOR in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
- e. Notifying GILBERT in writing, within ten (10) calendar days after receiving notice under subparagraph d (ii) above from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to every grant officer and other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph d(ii) above, with respect to any employee who is so convicted:
- i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - ii. Requiring such employee to participate satisfactorily in a drug-abuse assistance or rehabilitation program approved for such purposes by a federal, State, or local health, law enforcement or other appropriate agency.
- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs a, b, c, d, e, and f above.
- (l) To the best of its knowledge and belief:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of GILBERT, to any person or influencing or attempting to influence an officer or employee of any agency, member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with awarding of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or

modification of any federal grant, loan, or cooperative agreement;

b. 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 agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions; and

c. The CONTRACTOR shall require that the language of paragraph (F) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and agreements under grants, loans, and cooperative agreements) and that all Subcontractors shall certify and disclose accordingly.

Signature (CONTRACTOR Representative)

Date

Printed/Typed Name

Title