

When Recorded Return to:

State of Arizona
Arizona Department of Housing
ATTN: Finance and Accounting Administrator
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007

STATE OF ARIZONA
ARIZONA DEPARTMENT OF HOUSING
STATE HOUSING FUND
Housing Trust Fund Program

Declaration of Covenants, Conditions, and Restrictions

This State Housing Fund Program Declaration of Covenants, Conditions, and Restrictions dated this _____, is made by and between the STATE OF ARIZONA, ARIZONA DEPARTMENT OF HOUSING (hereinafter referred to as "Housing"), located at 1110 W. Washington Street, Suite 310, Phoenix, AZ 85007, acting pursuant to A.R.S. § 41-3953, A.R.S. § 41-3955 and____ (hereinafter referred to as the "Owner"):

RECITALS

WHEREAS, Owner desires to make use of certain funds available through the State Housing Fund Program; and
WHEREAS, Housing is willing to provide Owner with said funds, in accordance with the terms of that Program; and this Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, Owner must agree and does hereby agree to comply with certain occupancy and housing fee restrictions for the use restriction period set forth below, and the parties have entered into this Declaration of Covenants, Conditions, and Restrictions to evidence Owner's agreement to comply with such restrictions.

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

PART I: DEFINITIONS

1. **Agreement:** The term "Agreement" as used herein means this Declaration of Covenants, Conditions, and Restrictions, as it may from time to time be amended.
2. **Housing:** The term "Housing" as used herein means the State of Arizona, Arizona Department of Housing, and its successors.
3. **Fixed Unit:** The term "fixed unit" as used herein means that specific units have been designated as "State-assisted units" and the units designated as "State-assisted units" shall be permanently acknowledged as "State-assisted units" throughout the use restriction period as specified herein.
4. **Floating Units:** The term "floating unit" as used herein means that the units that are to be designated as "State-assisted units" may change over time as long as the total number of State-assisted units in the project remains constant and the units remain comparable in terms of size, features, and the number of bedrooms of non-State-assisted units over the term of the use restriction period as specified herein.
5. **Housing Trust Fund:** The term "Housing Trust Fund" as used herein means State funds authorized pursuant to A.R.S. § 41-3955 and A.R.S. § 44-313, as it currently exists and as it may be modified in the future.
6. **HUD:** The term "HUD" as used herein means the United States Department of Housing and Urban Development.
7. **Low-Income Households:** The term "low-income households" as used herein shall mean families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger households, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low household incomes.

8. **Mass Shelter:** The term "mass shelter" as used herein shall mean a type of housing which utilizes a dormitory type setting. Individual bedrooms are not available; many beds are in one room, with communal living, eating and restroom facilities. Inhabitants typically have limited or no space for personal belongings.
9. **Owner:** The term "Owner" as used herein means _____ as set forth at the beginning of this Agreement, or any successor in title to the property that is the subject of this Agreement.
10. **Program:** The term "program" as used herein means the State Housing Fund Program.
11. **Project:** The term "project" as used herein means a site or an entire building, or two or more buildings, together with the site on which the building or buildings are located, that are under common ownership, management, and financing and are to be assisted with State Housing Funds, under a commitment by the Owner, as a single undertaking. The term "project" includes all the activities associated with the site and building.
12. **State:** The term "State" as used herein means the State of Arizona.
13. **State-assisted Unit.** The term "State-assisted unit" as used herein means those units assisted with State Housing Funds and designated as State-assisted.
14. **State Housing Funds:** The term "State Housing Funds" as used herein means funds made available the Housing Trust Fund program made available from A.R.S. 41-3953 and A.R.S. 44-3955.
15. **Use Restriction Period:** The term "use restriction period" as used herein means the number of years during which the property is subject to this Agreement, as specified in Part II, below.

PART II: COVENANTS, CONDITIONS AND RESTRICTIONS

In order to retain its classification as a housing project which qualifies as an emergency shelter or temporary housing for the purposes of the State Housing Fund Program, during the period of time commencing upon the issuance of the Certificate of Occupancy or Certificate of Completion (as applicable) and continuing for a period of 15 years, the following restrictions apply to the project located at _____, and the property legally described as:

See Exhibit B

NOTICE: Owner shall provide Housing with a copy of the Certificate of Occupancy or Certificate of Completion (as applicable) by written notice in accordance with Part V, section 3 herein.

1. **State-Assisted Unit(s):** The provisions of this Agreement shall pertain only to the State-assisted units, with the exception of Part II section 11, which shall pertain to the entire project, or in the case of a mass shelter, the entire project.
2. **Use of Property:** During the use restriction period specified herein, Owner will maintain the State-assisted units as an emergency shelter or temporary housing and will house qualified individuals or hold available for housing for qualified individuals each State-assisted unit (or in the case of a "mass shelter", the entire facility) on a continuous basis.
3. **Type of Project:** This property shall be considered: mass shelter; multi-family structure; single-family structure.
4. **Occupancy and Housing Fee Limitations:** During the use restriction period specified herein the project shall maintain a total of 1 unit as State-assisted units (or in the case of a mass shelter, the entire facility), according to the following schedule:

No. of Units	Occupant Income Requirement	Housing Fee Limitations
12 beds	Must be occupied by qualified low-income households.	<ul style="list-style-type: none"> ▪ Any fees charged for the cost of housing shall not exceed 30% of the adjusted gross income of the assisted household calculated according to Section 8 guidelines.

5. **Suspension of Use Restriction Period:** During the Use Restriction Period specified herein, the project shall remain affordable, pursuant to these covenants running with the land, for not less than the appropriate period, without regard to the terms of the mortgage or to transfer of ownership, with the following exception. Upon foreclosure by a lender or other transfer in lieu of foreclosure made by a public agency or nonprofit agency or others (made in order to preserve the long-term use of the project), Housing may elect to suspend the use restriction period indefinitely with the following exception. If at any time during the originally established use restriction period, ownership is transferred back to the original Owner of record, or to any newly formed entity that includes the former Owner or those with whom the former Owner has or had

family or business ties, obtains an ownership interest in the project or property, the affordability period shall be revived according to its original terms.

6. **Housing Fees:** During the Use Restriction Period specified herein, Housing retains the right to review and approve housing fees proposed by the Owner for all State-assisted units (or in the case of a Mass Shelter, for the entire facility). If housing fees are to be charged to occupants, the Owner will be required to submit a housing fee schedule for all State-assisted units to Housing annually. All housing fees for State-assisted units (or in the case of a Mass Shelter, for the entire facility) shall be subject to the maximum rent limitations outlined at Part II, Section 4, if applicable. Housing also retains the right to approve any additional service fees required to be paid by the occupant of a State-assisted unit (or in the case of a Mass Shelter, the entire facility).
7. **Fixed or Floating State-Assisted Units:** The State-assisted units in this project have been designated as fixed units. (Not applicable to Mass Shelters.)
8. **Physical Standards:** During the period of affordability specified herein, the Owner must maintain the project in decent, safe, and sanitary condition and good repair in accordance with all applicable health, safety, and building codes and federal physical condition standards. Physical standards shall apply to the project as a whole, not just State-assisted units.
9. **Occupant and Participant Protections:**
 - (a) Those occupying a State-assisted unit (or in the case of a Mass Shelter, anyone inhabiting the facility) must not be required to agree to any of the following as a condition of receiving emergency or temporary housing:
 1. **Agreement to be Sued:** Agreement by the occupant to be sued, to admit guilt or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
 2. **Treatment of the Property:** Agreement by the occupant that the Owner may take, hold, or sell personal property of household members without notice to the occupant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the occupant concerning disposition of personal property remaining in the housing unit after the occupant has moved out of the unit. The Owner may dispose of this personal property in accordance with state law;
 3. **Excusing Owner From Responsibility:** Agreement by the occupant not to hold the Owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
 4. **Waiver of Notice:** Agreement of the occupant that the Owner may institute a lawsuit without notice to the occupant;
 5. **Waiver of Legal Proceedings:** Agreement by the occupant that the Owner may evict the occupant or household members without instituting a civil court proceeding in which the occupant has the opportunity to present a defense, or before a court decision on the rights of the parties;
 6. **Waiver of a Jury Trial:** Agreement by the occupant to waive any right to a trial by jury;
 7. **Waiver of right to appeal court decision:** Agreement by the occupant to waive the occupant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
 8. **Occupant Chargeable With Cost of Legal Actions Regardless of Outcome:** Agreement by the occupant to pay attorney's fees or other legal costs even if the occupant wins a court proceeding by the Owner against the occupant. The occupant, however, may be obligated to pay costs if the occupant loses.
 - (b) **Termination of Occupancy:** Owner may not terminate the occupancy except for: serious or repeated violation of the terms and conditions of any lease or conditions of occupancy per the facility's adopted rules; for violation of applicable federal, state, or local law; or for other good cause. Any termination must be preceded by the owner's service upon the occupant of a written notice specifying the grounds for the action.
 - (c) **Occupant Selection:** The Owner must adopt written occupant rules including selection policies and criteria for State-assisted units that:
 1. are consistent with the purpose of providing housing, emergency shelter and temporary housing for low-income families and special needs populations, as applicable;
 2. are reasonably related to the State's program eligibility and the applicant's ability to perform the obligations of the lease;
 3. provide for the selection of clients/occupants from a written waiting list in the chronological order of their application, insofar as is practical for the population served; and
 4. provide for the prompt written notification to any rejected applicant of the grounds for any rejection.
10. **Religious Organizations:** The completed housing project must be used exclusively by the Owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for occupants of the property.

11. **Affirmative Marketing:** During the use restriction period specified herein, Owner shall comply with the State's affirmative marketing requirements as outlined in the State Housing Fund Program affirmative marketing procedures and requirements, attached hereto as Exhibit A and incorporated herein by this reference as if fully set forth herein.
12. **Monitoring:** During the use restriction period specified herein, Housing shall conduct periodic on-site inspections of the project. Tests will be conducted to verify compliance with physical standards, clients/occupants' incomes, fees, and other State Housing Fund requirements, as applicable. The property inspection will not be restricted to the State-assisted units only, but shall apply to the entire project. The Owner covenants and agrees that Housing personnel are experts and may offer testimony in an administrative or judicial proceeding to enforce this Agreement as to whether the project is in decent, safe, and sanitary condition and in good repair.
13. **Period of Record Retention:** All pertinent documents, books, papers, accounts, reports, files, occupant lists, applications, leases, waiting lists, income examinations, and other records relating to the project and property specified herein shall be retained for five years following expiration of this agreement. Notwithstanding the foregoing, if any litigation, claim, negotiation, audit, or other action has been started before the expiration of the use restriction period specified herein, the records must be retained for five years following completion of the action and resolution of all issues which arise from it, or for five years following the end of the use restriction period, whichever is later.
14. **Inspection and/or Audit of Records:** Owner shall make available at all reasonable times, for inspection, transcription, excerpting, examination, copying, and audit by the State, the State Auditor General, or any of their representatives and designees, all pertinent books, documents, papers, accounts, reports, files, occupant lists, applications, leases, waiting lists, income examinations, and other records (hereinafter referred to as "Records") relating to the project and property specified herein. Upon request by such inspecting or auditing entity, a legible copy of all such Records shall be produced by the Owner at the specified office of Housing, the State, the State Auditor General, or at any other reasonable location. The original of all such Records shall also be available and produced for inspection, copying, and audit when needed to verify the authenticity of a copy.

PART III: REMEDIES

1. **Remedies of Housing and the State:** If Owner breaches any covenant, condition, or restriction set forth herein, and if such breach remains uncured for a period of sixty (60) days after notice thereof shall have been given by Housing or the State (or for an extended period approved in writing by Housing or the State if the breach stated in such notice can be corrected, but not within such sixty (60) day period, unless Owner does not commence such correction or commences such correction within such sixty (60) day period but thereafter does not diligently pursue the same to completion within such extended period), Housing or the State shall be entitled to any or all of the following remedies: return of all State Housing Funds provided for the project, plus interest at the maximum rate permitted by law, and/or an amount attributable to the increase in equity in the property attributable to the infusion of any State Housing Funds, utilized for any purpose; resort to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the property in accordance with the terms of this Agreement, or for initiation of foreclosure proceedings; or such other relief as may be appropriate, it being acknowledged by Owner that the beneficiaries of owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of owner's breach of this Agreement, because the beneficiaries include the low-income families to be benefited by Owner's use of State Housing Funds. Housing and the State shall be entitled to reimbursement of reasonable attorneys' fees and all costs incurred in any such judicial action in which Housing or the State shall prevail. Housing or the State shall require reasonable assurances of security for repayments required pursuant to this section in the form of a deed of trust for such property, which Owner shall execute as part of this Agreement.
2. **Remedies are Cumulative:** Each right, power and remedy of Housing or the State provided for in this Agreement, now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Housing or the State of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Housing or the State of any or all such other rights, powers or remedies.
3. **Remedies of Other Parties:** The occupancy requirements set forth in this Agreement also shall inure to the benefit of, and may be judicially enforced against Owner by, affected low-income families. Any such party that prevails in such

judicial action shall be entitled to reimbursement of its reasonable attorneys' fees and costs in which such party shall prevail.

PART IV: REPRESENTATIONS AND WARRANTIES OF OWNER

1. **Valid Execution:** Owner represents and warrants that Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement, and (iii) to assume responsibility for compliance with all applicable federal and State rules and regulations.
2. **No Conflict or Contractual Violation:** To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:
 - (a) will not violate any contractual covenants or restrictions between Owner and any third party or any such covenants or restrictions affecting the property;
 - (b) will not conflict with any of the instruments that create or establish Owner's authority;
 - (c) will not conflict with any applicable public or private restrictions;
 - (d) do not require any consent or approval of any public or private authority which has not already been obtained; and
 - (e) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner, without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the property or any part thereof.
3. **No Litigation:** No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.
4. **No Bankruptcy:** There is no pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, or regulation relating to bankruptcy, insolvency or relief for debtors.
5. **No Encumbrances or Attachment:** Owner shall not allow the property to be attached in any manner, including any liens or other encumbrances or any mortgages or other security interest during the use restriction period without the prior written consent of the State.
6. **Indemnification:** Owner agrees to indemnify and hold harmless Housing and the State from and against all liabilities, losses, claims, damages, demands, suits, liens, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Housing or the State as a result of any material inaccuracy in any of the representations and warranties contained in this Part IV.

PART V: MISCELLANEOUS

1. **Binding Effect; Covenants Running With the Land:** During the use restriction period specified herein, this Agreement and the covenants, conditions and restrictions contained herein shall be deemed to be covenants running with the land for the benefit of Housing, the State, and their successors, and shall pass to and be binding upon Owner's heirs, assigns and successors in title to the property, or if the property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, conditions and restrictions shall bind the leasehold interest as well as the property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the use restriction period specified herein in accordance with the terms hereof said covenants, conditions and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions, and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the property are conveyed, all of such covenants, conditions and restrictions shall run to each portion of the property. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refilled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be

required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of Housing or the State to enforce this Agreement.

2. **Amendments:** This Agreement may not be amended or modified except by a written instrument signed by each party hereto and recorded or filed as this Agreement was recorded and/or filed.
3. **Notices:** All notices required or permitted to be given pursuant to this Agreement must be in writing and will be deemed to have been duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following addresses:

If to Housing/the State:

Attn: Finance and Accounting Administrator, State of Arizona, Arizona Department of Housing, 1110 W. Washington Street, Suite 310, Phoenix, AZ 85007

If to Owner:

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

4. **Entire Agreement:** This Agreement, together with the State Housing Fund Agreement and other documents executed in conjunction with that Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof.
5. **Governing Law:** This Agreement, as it may affect the rights, remedies and obligations of Housing or the State, shall be governed by and construed in accordance with State law. Insofar as State law does not apply, the provisions of this Agreement shall be governed by and construed in accordance with Federal Law.
6. **Severability:** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
7. **Indemnification:** Owner will protect, defend, indemnify, and hold harmless Housing and the State from and against any and all liabilities, damages, demands, claims, suits, liens, and judgments of whatever nature including but not limited to claims for contribution or indemnification for injuries to or death of any person or persons caused by, in connection with, or arising out of any activities undertaken pursuant to this Agreement. Owner's obligation to protect, defend, indemnify, and hold harmless as set forth in this section shall include any and all attorneys' fees incurred by Housing and/or the State in the defense or handling of said suits, demands, judgments, liens and claims and all attorneys' fees and investigation expenses incurred by Housing and/or the State in enforcing or obtaining compliance with the provisions of this Agreement.
8. **Section Titles:** Section titles are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.
9. **Compliance With Laws; Permits and Certifications:** Owner shall comply with all federal, state and local laws, codes, ordinances, rules, and regulations, conditions, and assurances and shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required in regard to the property.
10. **OWNER AGREEMENT TO RECORD:** Owner agrees that this Agreement will be recorded in the public records of the county where the property described hereinabove is located. Owner will bear the responsibility for all costs of such recording.

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

STATE OF ARIZONA, ARIZONA DEPARTMENT OF HOUSING

BY: _____ DATE: _____
Sheila D. Harris, Ph.D., Director

OWNER:

BY: _____ DATE: _____
NAME: _____ TITLE: President

State of Arizona
County of Maricopa

This instrument was acknowledged before me this _____ day of _____, 200__
by _____ of the State of Arizona, Arizona Department of Housing

My Commission Expires:

Notary Public

State of Arizona
County of _____

This instrument was acknowledged before me this _____ day of _____, 200__
by _____.

My Commission Expires:

Notary Public

SAMPLE TEMPLATE

EXHIBIT A
AFFIRMATIVE MARKETING PROCEDURES
STATE HOUSING FUND PROGRAM

All correspondence, notices, and advertisements related to the State Housing Funds shall contain either the Equal Housing Opportunity logo or slogan.

State Housing Fund assisted housing must comply with the following procedures for the required compliance period (depending on which program is utilized):

- Owners advertising vacant units must include the equal housing opportunity logo or statement. Advertising media must include general audience and minority-owned newspapers, radio, television, brochures, leaflets, or may involve simply a sign in a window.
- The Owner shall solicit applications for vacant units from persons in the housing market who are least likely to apply for the State Housing Fund assisted housing without the benefit of special outreach efforts. In general, persons who are not of the race/ethnicity of the residents, as indicated in U.S. Census documents, of the neighborhood in which the assisted project is located shall be considered those least likely to apply.
- The Owner shall use community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service centers, or medical service centers as resources for this outreach.
- The Owner must maintain a file containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letters, etc.) and the records to assess the results of these actions, and make said documents available for inspection by Housing.
- The Owner shall maintain a listing of all occupants residing in each unit at the time of application submittal through the end of the compliance period.

Housing will assess the affirmative marketing efforts of the Owner by comparing predetermined occupancy goals (based upon the area from which potential occupants will be drawn) to actual occupancy data that the Owner is required to maintain. Outreach efforts of the part of the Owner will be evaluated by reviewing marketing efforts.

Housing will assess the efforts of the Owners receiving State Housing Funds during the use restriction period and marketing of the units by use of a compliance certification or personal monitoring visit to the project according to Housing's monitoring schedule.

Where the Owner fails to follow the affirmative marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve occupancy goals, or other actions Housing may deem necessary.

Each unit of general local government that subgrants the administration of this program must adopt affirmative marketing procedures that meet the requirement in paragraphs (a) and (b) of 24 CFR 92.351.

EXHIBIT B
LEGAL DESCRIPTION

SAMPLE TEMPLATE