

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**
HOME Investment Partnerships and Housing Trust Fund Programs

Declaration of Covenants, Conditions, and Restrictions

This State Housing Fund Program Declaration of Covenants, Conditions, and Restrictions dated this [REDACTED], is made by and between the STATE OF ARIZONA, ARIZONA DEPARTMENT OF HOUSING (hereinafter referred to as "Housing"), its successors or its assignee(s), located at 1110 W. Washington Street, Suite 310, Phoenix, AZ 85007, acting pursuant to § 41-3953 and A.R.S. § 41-3955, and Title II (HOME Investment Partnerships Act) of the National Affordable Housing Act of 1990 and [REDACTED], an Arizona [REDACTED], (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, the provisions contained in Part 92 of title 24 of the Code of Federal Regulations, as amended, are hereby incorporated into this Declaration of Covenants, Conditions, and Restrictions by this reference as if fully set forth herein; and

WHEREAS, pursuant to Part 92 of title 24 of the Code of Federal Regulations, as amended, Owner must agree and does hereby agree to comply with certain occupancy and rent restrictions for the period of affordability 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. **Adjusted Income, Annual Income, Monthly Adjusted Income, Monthly Income:** The terms "adjusted income," "annual income," "monthly adjusted income," and "monthly income" as used herein shall mean such income, as determined by Housing, calculated in accordance with the definitions of these terms in Part 5, subpart F of title 24 of the Code of Federal Regulations.
2. **Agreement:** The term "Agreement" as used herein means this Declaration of Covenants, Conditions, and Restrictions, as it may from time to time be amended.

3. **Housing:** The term "Housing" as used herein means the State of Arizona, Arizona Department of Housing, and its successors.
4. **Fair Market Rent:** The term "fair market rent" as used herein means the fair market rent determined by HUD for existing housing for comparable units in the area as established under section 888.111 of title 24 of the Code of Federal Regulations.
5. **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 period of affordability as specified herein.
6. **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 period of affordability as specified herein.
7. **High HOME Rent:** The term "High HOME Rent" as used herein means a rent that does not exceed the area 65% rent limit, as determined by HUD, with a utility allowance deduction, approved by Housing, for all utility costs to be paid by the tenant.
8. **HOME Program:** The term "HOME Program" as used herein means the HOME Investment and Partnerships Program delineated in Part 92 of title 24 of the Code of Federal Regulations, as it currently exists and as it may be modified in the future.
9. **Housing Trust Fund:** The term "Housing Trust Fund" as used herein means State funds authorized pursuant to § 41-3953 and A.R.S. § 41-3955, as it currently exists and as it may be modified in the future.
10. **HUD:** The term "HUD" as used herein means the United States Department of Housing and Urban Development.
11. **Low-Income Households:** The term "low-income households" as used herein shall mean families whose annual incomes do not exceed 60 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 60 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.
12. **Low HOME Rent:** The term "Low HOME Rent" as used herein means a rent that does not exceed the area 50% rent limit, as determined by HUD, with a utility allowance deduction, approved by Housing, for all utility costs to be paid by the tenant.
13. **Owner:** The term "Owner" as used herein means [REDACTED] as set forth at the beginning of this Agreement, or any successor in title to the property that is the subject of this Agreement.
14. **Period of Affordability:** The term "period of affordability" as used herein means the period of the time commencing with the issuance of a Certificate of Occupancy and ending upon the [REDACTED] (XXX) year anniversary of the issuance of the Certificate of Occupancy.
15. **Program:** The term "program" as used herein means the State Housing Fund Program.
16. **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 under Part 92 of title 24 of the Code of Federal Regulations. The term "project" includes all the activities associated with the site and building.
17. **Project Completion:** The term "project completion" as used herein means the date of the issuance of a Certificate of Occupancy.
18. **Section 8 Participants:** The term "Section 8 Participants" as used herein means holders of a voucher of family participation under 24 CFR part 982 (Housing Choice Voucher Program).
19. **State:** The term "State" as used herein means the State of Arizona.
20. **State-assisted Unit.** The term "State-assisted unit" as used herein means those units assisted with State Housing Funds and designated as State-assisted. The term State-assisted unit is synonymous with the term "HOME-assisted unit" pursuant to Part 92 of title 24 of the Code of Federal Regulations.
21. **State Housing Funds:** The term "State Housing Funds" as used herein means funds made available through either the HOME Investment Partnership Program under Part 92 of title 24 of the Code of Federal Regulations through allocations and reallocations, plus all matching funds, repayments and interest or other return on the investment of these funds; and/or Housing Trust Funds made available through A.R.S. 41-3953 and A.R.S. 41-3955.
22. **Utility Allowance:** The term "utility allowance" as used herein means the monthly utility allowance authorized by Housing for use in determining the maximum amount of rent allowable on a State-assisted unit. Dollar figures for the compilation of proposed utility allowances must be garnered from the Public Housing Authority in which the project is located. Figures to be included in the calculation are all utility costs (except telephone) required to be paid by the tenant.

23. **Very Low-Income Household:** The term "very low-income household" as used herein means households whose annual incomes do not exceed 50 percent of the median household 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 50 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 family incomes.

PART II: COVENANTS, CONDITIONS AND RESTRICTIONS

In order to retain its classification as a rental housing project which qualifies as affordable housing for the purposes of the State Housing Fund Program, during the period of time commencing upon project completion and continuing for a period of [redacted] years, the following restrictions apply to the project located at [redacted] and the property legally described as:

See Exhibit B

NOTICE: Owner shall provide Housing with written notice of project completion 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.
2. **Use of Property:** During the period of affordability specified herein, Owner will maintain the State-assisted units as rental housing and will rent or hold available for rental each State-assisted unit on a continuous basis.
3. **Tenancy and Rent Limitations:** During the period of affordability specified herein the project shall maintain a total of [redacted] units as State-assisted units, according to the following schedule:

TO BE CUSTOMIZED ACCORDING TO EACH INDIVIDUAL PROJECT AND IT'S COMPLIANCE REQUIREMENTS

No. of Units	Tenant Income Requirement	Rent Requirement
Standard Rental Project:		
	Must be occupied by low-income households initially earning no more than 60% of the area median income adjusted by family size.	High Program Rent Unit. Must bear rents not greater than the lesser of: <ul style="list-style-type: none"> the fair market rent (FMR) for existing housing for comparable units in the area established by the Program with a utility allowance deduction for all utility costs to be paid by the tenant; <i>or</i> the High Program Rent which is a rent that does not exceed the area 65% rent limit with a utility allowance deduction for all utility costs to be paid by the tenant.
2	Must be occupied by very-low income households whose incomes do not initially exceed 50% of the area median income adjusted by family size.	Low Program Rent Unit. Must bear rents not greater than the lesser of: <ul style="list-style-type: none"> the fair market rent (FMR) for existing housing for comparable units in the area established by the Program with a utility allowance deduction for all utility costs to be paid by the tenant; <i>or</i> the Low Program Rent which is a rent that does not exceed the area 50% rent limit with a utility allowance deduction for all utility costs to be paid by the tenant.
Single-Room Occupancy (SRO) Rental Project:		
	Must be occupied by low-income households whose incomes do not initially exceed 60% of the area median income.	SRO Unit. Must bear rents no greater than 75% of the fair market rent (FMR) for a zero-bedroom unit with a utility allowance deduction for all utility costs to be paid by the tenant.
	Must be occupied by very-low income households whose incomes do not initially exceed 50% of the area median income.	SRO Unit. Must bear rents no greater than 75% of the fair market rent (FMR) for a zero-bedroom unit with a utility allowance deduction for all utility costs to be paid by the tenant.
Group Home Rental Project:		

<p>Must be occupied by low-income households (persons) initially earning no more than 60% of the area median income adjusted by family size. <i>Note: Live-in service providers are not required to be low-income.</i></p>	<p>Group Home Unit. Each person (or household) must pay a proportionate share of the rent. The rent shall not be greater than the lesser of:</p> <ul style="list-style-type: none"> the fair market rent (FMR) established by the Program with a utility allowance deduction for all utility costs to be paid by the tenant; <i>or</i> the High Program Rent which is a rent that does not exceed the area 65% rent limit with a utility allowance deduction for all utility costs to be paid by the tenant, whichever is less.
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4. **Leasing to Section 8 Participants:** During the period of affordability specified herein, the State-assisted units shall not be refused for leasing to a holder of a voucher of family participation under 24 CFR part 982(Housing Choice Voucher Program) or to the holder of a comparable document evidencing participation in a State Housing Fund (or HOME) tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable tenant-based assistance document.
5. **Suspension of Period of Affordability:** During the period of affordability 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 affordability of the project), Housing may elect to suspend the affordability period indefinitely with the following exception. If at any time during the originally established period of affordability, 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. **Rent Schedule and Utility Allowances:** During the period of affordability specified herein, Housing retains the right to review and approve rents proposed by the Owner for all State-assisted units. The Owner will be required to submit a rent schedule for all State-assisted units to Housing annually. Rent calculations must include a reassessment of the utility allowance which is required to be updated annually. All rents for State-assisted units shall be subject to the maximum rent limitations outlined at Part II. Section 3. Housing also retains the right to approve any additional service fees required to be paid by the tenant of a State-assisted unit. Additionally, all increases are subject to the rent limitations outlined at Part II. Section 3, and rents exceeding these limits are strictly prohibited, except as outlined under Part II. Section 10. Any increase in rents for State-assisted units is subject to the provisions of outstanding leases; in any event, the Owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.
7. **Annual Recertification of Tenant Income:** The Owner must reexamine the income of tenants living in State-assisted units at least annually. Each recertification must take place on the anniversary of the original income evaluation and lease signing, unless the Owner has adopted an annual schedule to perform all verifications at the same time.
8. **Fixed or Floating State-Assisted Units:** The State-assisted units in this project have been designated as **fixed / floating** units.
9. **Increases in Tenant Income:** Because tenants' incomes are likely to change over time, the Owner must take the steps outlined herein to maintain compliance with State-assisted unit rent and occupancy requirements during the period of affordability specified herein.

TO BE CUSTOMIZED ACCORDING TO EACH INDIVIDUAL PROJECT AND IT'S COMPLIANCE REQUIREMENTS

FOR USE IN STANDARD PROJECTS: if the income of a tenant occupying a Low Program Rent unit increases but does not exceed 80% of the area median income, that unit shall become a High Program Rent unit. To replace the Low Program Unit, the Owner must rent the next available unit (if the State-assisted units are designated as "floating" units) or the next available State-assisted unit (if the State-assisted units are designated as "fixed"), to a very low-income tenant. The rent of the initial tenant whose income has increased may be increased to the High Program Rent for the unit. This process shall not increase the number of State-assisted units. If the tenant's income increases above 80% of the area median income, the unit shall still be considered to be a High Program Rent unit but the tenant's rent must be adjusted as described under Part II. Section 10. In projects where the State-assisted units "float", the next available unit of comparable size or larger must be rented to tenants eligible for a State-assisted unit and the rent can be adjusted as appropriate.

FOR USE IN SRO PROJECTS: If the income of a very-low income household increases but does not exceed 80% of the area median income, that household shall be considered a low-income household and may remain in the unit. To replace the very-low

income unit, the Owner must rent the next available unit (if the State-assisted units are designated as "floating" units) or the next available State-assisted unit (if the State-assisted units are designated as "fixed"), to a very-low income tenant. The rent of the initial tenant whose income has increased may not be increased for the unit. This process shall not increase the number of State-assisted units. If the tenant's income increases above 80% of the area median income, the household's rent must be adjusted as described under Part II. Section 10. In projects where the State-assisted units "float", the next available unit of comparable size or larger must be rented to a household eligible for a State-assisted unit and the rent can be adjusted as appropriate.

FOR USE IN GROUP HOME PROJECTS: If the income of a low-income household increases but does not exceed 80% of the area median income, that household shall still be considered a low-income household and may remain in the unit. The rent of the initial tenant whose income has increased may not be increased for the unit. If the tenant's income increases above 80% of the area median income, the household's rent must be adjusted as described under Part II. Section 10.

10. **Adjusting Rents for Over-Income Tenants:** Over-income tenants in State-assisted units, as described in Part II. Section 9 must pay 30% of their adjusted income for rent plus the authorized utility allowance. If 30% of their adjusted income exceeds the fair market rent, the Owner may charge only up to the fair market rent. When state or local law imposes rent controls, the rent control applies.

11. **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 the applicable health, safety, and building codes and federal physical conditions standards. Physical standards shall apply to the project as a whole, not just State-assisted units.

12. **Tenant and Participant Protections:**

(a) **Lease:** During the period of affordability specified herein, the lease between a tenant and an Owner of rental housing assisted with State Housing Funds must be for not less than one year, unless by mutual agreement between the tenant and the Owner.

(b) **Prohibited Lease Terms:** The lease may not contain any of the following provisions:

1. **Agreement to be Sued:** Agreement by the tenant 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 tenant that the Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant 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 tenant 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 tenant that the Owner may institute a lawsuit without notice to the tenant;
5. **Waiver of Legal Proceedings:** Agreement by the tenant that the Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant 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 tenant to waive any right to a trial by jury;
7. **Waiver of right to appeal court decision:** Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
8. **Tenant Chargeable With Cost of Legal Actions Regardless of Outcome:** Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins a court proceeding by the Owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(c) **Termination of Tenancy:** Owner may not terminate the tenancy or refuse to renew the lease of a tenant of a State-assisted unit as specified herein except for: serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Any termination or refusal to renew must be preceded by the owner's service upon the tenant of a written notice specifying the grounds for the action, which notice must be served upon the tenant at least 30 days before the termination or refusal to renew is to be effective.

(d) **Tenant Selection:** The Owner must adopt written tenant selection policies and criteria for State-assisted units that:

1. are consistent with the purpose of providing housing for very low-income and low-income families;
2. are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;
3. provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practical; and
4. provide for the prompt written notification to any rejected applicant of the grounds for any rejection.

13. **Religious Organizations:** During the period of affordability, the project specified herein which was assisted with State Housing Funds will not be provided for rental or use to any primarily religious organizations, such as churches, for any activity including secular activities. 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 tenants of the property.
14. **Affirmative Marketing:** During the period of affordability 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.
15. **Monitoring:** During the period of affordability specified herein, Housing shall conduct periodic on-site inspections of the project. Tests will be conducted to verify compliance with physical standards, tenants' incomes, rents, and other State Housing Fund requirements. 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.
16. **Period of Record Retention:** All pertinent documents, books, papers, accounts, reports, files, tenant 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 period of affordability 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 period of affordability, whichever is later.
17. **Inspection and/or Audit of Records:** Owner shall make available at all reasonable times, for inspection, transcription, excerpting, examination, copying, and audit by Housing, the State, the State Auditor General, HUD, the Comptroller General of the United States, or any of their representatives and designees, all pertinent books, documents, papers, accounts, reports, files, tenant 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 pursuant to title 24 of the Code of Federal Regulations, section 92.252, 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 and very low-income families. Any such party that prevails in such judicial action shall be entitled to reimbursement of its reasonable attorneys' fees and costs.

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 period of affordability 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 period of affordability 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 period of affordability 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:

Arizona Department of Housing

Attn: Finance and Accounting Administrator

1110 W. Washington Street, Suite 310

Phoenix, Arizona 85007

with copies to:

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.

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 tenants 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 tenants 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 rent-up 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