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Town Clerk
Town of Sahuarita
375 W. Sahuarita Center Way
Sahuarita, Arizona 85629

**ASSURANCE AGREEMENT TO CONSTRUCT
SUBDIVISION IMPROVEMENTS
(Third Party Trust)**

**Town of Sahuarita Arizona,
an Arizona municipal corporation**

and

**SUBDIVIDER NAME,
an Arizona _____**



TOWN COUNCIL MEMBERS

Mayor Tom Murphy
Vice Mayor Kara Egbert
Edgar Lytle
Kimberly Lisk
Deborah Morales
Diane Priolo
Steven Gillespie

TOWN MANAGEMENT

Shane D. Dille, Town Manager
Galovale Galovale, Town Engineer/Public Works Director

This Agreement is made and entered into this _____ day of _____, 20____, by and between **SUBDIVIDER NAME** (the "Subdivider"), **TRUSTEE NAME**, as Trustee under Trust Number **TRUST NUMBER**, and not in its corporate capacity (the "Trustee"), and the TOWN OF SAHUARITA, ARIZONA, a municipal corporation (the "Town"). The Subdivider, the Trustee and the Town are sometimes collectively referred to in this Agreement as the "Parties," any one of which is sometimes referred to as a "Party."

RECITALS

- A. Subdivider is the beneficiary of **TRUSTEE NAME**, Trust Number **TRUST NUMBER**, which owns certain parcels of land located in the Town of Sahuarita, Pima County, Arizona, described in Section 1, which the Subdivider intends to develop and subdivide.
- B. The Parties wish to establish specific terms, conditions and guidelines to assure completion of the required subdivision improvements in compliance with the provisions of A.R.S. § 9-463.01 (C) (8) and the Sahuarita Town Code, as they may be amended from time to time.
- C. The Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of substandard subdivisions, including premature subdivision which leaves property undeveloped and unproductive.
- D. This Agreement inures to the benefit of the Parties and is not executed for the benefit of third parties, such as, but not limited to, materialmen, laborers, or others providing work, services or materials for the Subdivision, or lot or home purchasers in the Subdivision.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter provided, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed between the Town and the Subdivider as follows:

- 1. **PROPERTY DESCRIPTION.** On _____, 20____, the Town approved the final plat identified as **LOT NUMBERS AND SUBDIVISION PLAT NAME**, recorded in the office of the Pima County Recorder at Sequence Number _____. The land area depicted on the plat and the manner in which the plat proposes to divide and develop the land, as set forth on the site map and legal description attached as "Exhibit A," are collectively referred to in this Agreement as the "Subdivision."
- 2. **CONSTRUCTION OF SUBDIVISION IMPROVEMENTS.** The Subdivider shall construct and install, at no expense to the Town, all Subdivision improvements shown on the approved preliminary plat (if applicable), final plat and improvement plans as defined in A.R.S. § 9-463 (2) for the Subdivision, and all other improvements or infrastructure that the Town reasonably determines are required to serve any portion of the Subdivision, including by way of illustration but not by limitation, improvements such as grading, streets, sidewalks, survey monuments, sanitary sewers, water and other utilities, drainage, flood control improvements, and those improvements listed on "Exhibit B" (the "Improvements"). The Subdivider's obligation to complete the Improvements arises as of the date of this Agreement, is independent of any obligations of the Town, and is not conditioned upon the sale of any lots or improvements within the Subdivision. Nothing in this Agreement shall be construed as an undertaking by the Trustee to install, to guarantee the installation of, or to indemnify any other person for the installation of the Improvements.
- 3. **EXISTING UTILITIES.** Any relocation or modification of existing utilities or public improvements necessary to construct the Improvements shall be done at no expense to the public. The Subdivider's performance of this requirement shall be considered in determining whether to release assurances under Section 12 and 13.

4. **ASSURANCE OF CONSTRUCTION.** This Agreement is submitted as an assurance that the Subdivider will construct the Improvements as required by A.R.S. § 9-463.01 (C) (8) and Sahuarita Town Code Section 18.69 and other Town regulations and laws.
5. **START OF CONSTRUCTION.** The Subdivider shall begin construction of the Improvements in sufficient time to allow for completion of the Improvements within the time period required by this Agreement, the Sahuarita Town Code, or any other agreements between the parties.
6. **DILIGENCE.** Once construction of the Improvements has begun, the Subdivider shall diligently pursue completion of the Improvements. The Subdivider's failure to do substantial work on the Improvements for a period of 30 consecutive calendar days shall be presumptive evidence that the Subdivider is failing to diligently pursue construction of the Improvements.
7. **COMPLETION OF THE IMPROVEMENTS.** The Subdivider shall complete construction of the Improvements within two (2) years of the date of this Agreement. This completion date shall be extended in the event of Force Majeure as provided in Section 42. The Improvements shall not be considered completed unless and until they have been constructed in accordance with Town approved plans, current accepted and adopted Town standards, specifications, details, requirements and agreements.
8. **ACCEPTANCE OF THE IMPROVEMENTS.** With respect to any of the Improvements to be dedicated to the Town, the Town shall not accept the Improvements or maintenance responsibility for the Improvements unless and until all of the following have occurred:
 - 8.1 The Improvements have been completed in accordance with Section 7 of this Agreement.
 - 8.2 The Improvements, and the rights-of-way and easements in which the Improvements are located, have been dedicated or conveyed to the Town.
 - 8.3 The Town has, by formal action, accepted dedication or conveyance of the Improvements, and the rights-of-way and easements in which they are located.
 - 8.4 The Town Engineer has acknowledged in writing that all related private improvement agreements and permits have been satisfactorily completed.
9. **WARRANTY.** The Subdivider warrants that the Improvements will be free from defects for a period of one year from the date the Town determines that the Improvements have been constructed and accepted in accordance with all applicable plans and regulations as provided in Section 8.
10. **SECURITY.** To secure performance of its obligations under this Agreement, the Subdivider has placed or will place ownership of the Subdivision into a third party trust (the "Trust") that is subject to the terms of this Agreement. The Subdivider agrees that if the trust agreement entered into between the Subdivider and the Trustee is terminated for any reason before the completion of all of the Improvements, the Subdivider shall tender to the Town (i) monetary assurances in an amount equal to the Town's estimate of the total cost to complete the Improvements, or (ii) other assurances acceptable to the Town.
11. **LIMITATION ON TRANSFER OF TITLE.** The Trustee shall not convey title to the Subdivision or any portion of the Subdivision without obtaining prior written approval from the Town in the form of a release of assurances signed by the Town Manager pursuant to Section 12.
12. **RELEASE OF ASSURANCES.** The obligations of the Subdivider and the Trustee under this Agreement shall be released, and a release of assurances issued by the Town Manager, only upon the Subdivider's satisfactory completion and the Town's acceptance of the Improvements in accordance with Section 8, or the Subdivider's tender and the Town's acceptance of substitute assurances for completion of the Improvements.
13. **PARTIAL RELEASE OF ASSURANCES.** The Town may issue a partial release of assurances, permitting the sale or transfer of certain lots to end users. In the case of a partial release of assurances, the Town will not be deemed to have accepted the improvements as provided in Section 8, and the warranty provided in Section 9 will not begin. The Town will not issue partial release of assurances unless all of the following have occurred:

- 13.1** All of the Improvements that are required for, benefit, or serve the released lots, including but not limited to all-weather access for emergency vehicles, signage, and utilities capable of independent operation, have been completed in accordance with Section 7 of this Agreement; and
- 13.2** The Town determines that the released lots and the Improvements that are required for, benefit, or serve the released lots can be used separately from the Improvements that are not yet completed.
- 14.** **SUBSTITUTION OF ASSURANCES.** The Subdivider may submit substitute assurances in a form and amount acceptable to the Town at any time the Subdivider is not in default of this Agreement.
- 15.** **CONTRACTS FOR SALE.** Notwithstanding Section 11, the Trustee may enter into a contract or a deposit receipt agreement for the sale of the Subdivision or any portion of the Subdivision if the contract or agreement clearly states that no portion of the Subdivision shall be conveyed until the Subdivider's obligations under this Agreement are fully performed.
- 16.** **BULK SALES.** Notwithstanding Section 11, the Trustee may sell and convey all of the Subdivision in one transaction to a single purchaser who has tendered to the Town satisfactory assurances for the completion of the Improvements.
- 17.** **CONVEYANCE OUT OF TRUST FOR ENCUMBRANCE.** Notwithstanding Section 11, the Trustee may convey all or part of the Subdivision to the Subdivider or to a beneficiary of the Trust solely for the purpose of encumbering the Subdivision, provided that the Subdivision is thereafter immediately re-conveyed into the Trust. Any person or entity who records an encumbrance or security agreement against all or any portion of the Subdivision shall be subject to the obligations of this Agreement.
- 18.** **TOWN'S OPTION UPON DEFAULT.** In addition to any other remedies, if the Subdivider defaults on its obligations under this Agreement, the Town may at its sole discretion prepare and record a re-plat of the Subdivision, eliminating the Improvements that have not been constructed and the lots or parcels served by those Improvements. The Subdivider hereby authorizes the Town to execute on behalf of the Subdivider all documents necessary to re-plat the Subdivision. The re-plat may exclude any dedications already in use by the public or for utilities needed to serve the portions of the Subdivision which are not re-platted. The Subdivider shall pay the reasonable costs incurred to re-plat the Subdivision. The Town shall give 30 calendar days' notice to the Subdivider and the Trustee before initiating any action to re-plat the Subdivision or any portion of the Subdivision.
- 19.** **ISSUANCE OF PERMITS.** The Town shall not issue any permit for development of the Subdivision or any portion of it, except permits for the completion of the Improvements, unless the Improvements that serve the portion of the Subdivision for which the permit is sought have been completed or are secured by acceptable assurances on file with the Town.
- 20.** **TERMINATION.** This Agreement shall remain in full force and effect until one of the following has occurred:
- 20.1** All the Improvements have been completed and accepted by the Town Engineer as evidenced by a written full release of assurances from the Town Manager.
- 20.2** The Subdivider has tendered substitute assurances acceptable to the Town for the completion of the Improvements.
- 20.3** A new subdivision plat has been recorded for the Subdivision in compliance with any and all applicable laws and regulations.
- 21.** **BINDING EFFECT.** If for any reason the legal or beneficial title to the Subdivision changes without the Town's prior approval of substitute assurances or issuance of a release of assurance, this Agreement shall remain binding upon the Parties and their respective successors and assigns. This Section shall not be construed as a waiver of the limitation on the transfer of title contained in Section 11 or the requirements for release of assurance or substitute assurance contained in Sections 12, 13 and 14.
- 22.** **SEVERABILITY.** The provisions of this Agreement are severable. A court's determination that any portion of this Agreement is invalid shall not affect the validity of the remainder of this Agreement.

23. **NO WAIVER.** No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to be a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and the Subdivider; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Subdivider.

24. **SUBDIVIDER'S NOTICE OF CHANGES.** The Subdivider agrees to provide written notice to the Town at least ten calendar days before the occurrence of (i) a change of name, corporate identity or address of the Subdivider or the Trustee; (ii) intent to transfer, or a transfer of title to the Subdivision by deed, contract or operation of law; (iii) the foreclosure of a lien against the Subdivision or a portion of the Subdivision, (iv) the filing of a voluntary or involuntary petition of bankruptcy respecting the Subdivider or affecting the Subdivision; and (v) any other event that may affect performance of the Parties.

25. **NOTICES, ADDRESSES, AND CHANGE OF ADDRESS.** Any notice required under this Agreement shall be complete when sent via First Class Mail or hand delivered to the following addresses. Any Party may change its address for purposes of notice under this Agreement by mailing a notice of change of address to the other Parties.

Subdivider: _____

Attn: _____

Trustee: _____

Attn: Trust Dept.

Town: Town of Sahuarita Public Works Department
375 W. Sahuarita Center Way
Sahuarita, Arizona 85629
Attn: Town Engineer

With a copy to: Town of Sahuarita Department of Law
375 W. Sahuarita Center Way
Sahuarita, Arizona 85629
Attn: Town Attorney

26. **CONFLICT OF INTEREST.** This Agreement is subject to the provisions of A.R.S. § 38-511, which provides in pertinent part:

The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

27. **NON-DISCRIMINATION.** The Parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website <http://azmemory.azlibrary.gov/cdm/ref/collection/execorders/id/680> which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the

Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

28. **COMPLIANCE WITH FEDERAL AND STATE LAWS.** The Subdivider shall comply with all Applicable Laws, standards and Executive Orders, without limitation to those designated within this Agreement.
29. **REMEDIES.** Any Party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.
30. **APPLICABLE LAW.** This Agreement shall be governed by the law of the State of Arizona, and suits pertaining to this Agreement shall be brought only in Pima County, State of Arizona.
31. **AMENDMENTS.** This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Subdivider. Within ten days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Pima County.
32. **TIME OF ESSENCE.** Time is of the essence with respect to each and every provision of this Agreement and the performance required by each Party hereto.
33. **PROVISIONS REQUIRED BY LAW.** Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of any Party, the Agreement will promptly be physically amended to make such insertion or correction.
34. **SUCCESSORS AND ASSIGNS.** This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.
35. **ATTORNEYS' FEES.** In the event any Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.
36. **SCHEDULES AND EXHIBITS.** All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.
37. **ENTIRE AGREEMENT; INTERPRETATION; PAROL EVIDENCE.** This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting the Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement. To the extent of any conflict between the terms and provisions of this Agreement and those of any existing or future public improvement agreement or similar agreement concerning the design and/or construction of any Segment, the terms and provisions of this Agreement shall control.
38. **RECORDATION OF AGREEMENT.** This Agreement shall be recorded in the Official Records of Pima County, Arizona after its approval and execution by all Parties.
39. **RELATIONSHIP OF THE PARTIES.** It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An

employee or agent of one Party shall not be deemed or construed to be the employee or agent of another Party for any purpose whatsoever.

40. **ADDITIONAL ACTS AND DOCUMENTS.** Each Party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement. If any action or approval is required of any Party in furtherance of the rights under this Agreement, such approval shall not be unreasonably withheld.
41. **HEADINGS; COUNTERPARTS.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
42. **FORCE MAJEURE.** The performance of any Party and the duration of this Agreement shall be extended by any causes that are extraordinary and beyond the control of the Party required to perform, such as, but not limited to, a significant weather or geological event or other act of God, civil or military disturbance, labor or material shortage, or work stoppages required by governmental authorities or acts of terrorism. Changes in market conditions shall not be considered Force Majeure events.
43. **COMPUTATION OF TIME.** In computing any period of time under this Agreement the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (local time, Sahuarita, Arizona) on the last day of the applicable time period provided herein.

[SIGNATURES ON FOLLOWING PAGES]

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

TOWN:

Town of Sahuarita, an Arizona municipal corporation

Galovale Galovale, Town Engineer

APPROVED AS TO CONTENT:

Anna Casadei, Planning & Building Director

APPROVED AS TO FORM:

Jon M. Paladini, Town Attorney

SUBDIVIDER:

SUBDIVIDER NAME

By: _____

Title: _____

STATE OF ARIZONA)
 : ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of _____, on its behalf (the "Subdivider").

Notary Public

NOTARY SEAL:

TRUSTEE:

TRUSTEE NAME, as Trustee under
Trust number **TRUST NUMBER**,
and not in its corporate capacity

By: _____

Title: _____

STATE OF ARIZONA)
 : ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____, the _____ of
_____, as Trustee under Trust Number _____, and not in its
corporate capacity (the "Trustee").

Notary Public

NOTARY SEAL:

EXHIBIT A

Site Map and Legal Description

LOT NUMBERS AND SUBDIVISION PLAT NAME, according to the plat of record in the office of the Recorder of Pima County, Arizona, recorded in Sequence No. _____.

*** INCLUDE SITE MAP ***

EXHIBIT B
Improvements and Conditions

Subdivision Name: **LOT NUMBERS AND SUBDIVISION PLAT NAME**

Case No.: **TOWN OF SAHUARITA CASE NO.**

Trust No.: **TRUSTEE & TRUST NUMBER**

The following improvements and conditions are made a part of the attached Substitute Assurance Agreement:

1. Obtaining all necessary Governmental permits;
2. Preservation of native plants, as identified on approved salvage plans;
3. Grading
 - a. Rough grading, including building sites
 - b. Structures in contract
 - c. Utility trenching in contract
 - d. Any other included items
4. Sanitary sewers / septic systems
5. Water distribution system
6. Other utility installations
7. Any off-site installations required
8. Any drainage not included in the grading or paving contracts
9. Paving contract:
 - a. Subgrade, if required
 - b. Base
 - c. Paving
 - d. Curb and gutter
 - e. Storm drainage not covered elsewhere
 - f. Handicap ramps
 - g. All public sidewalks
10. Installation of all signs and paving markings
11. Landscaping in the public right-of-way
12. Other construction items (guardrails, etc.)
13. Placement of all lot corners, standard monuments, and bench marks and records thereof
14. Field engineering: Staking, surveillance, inspections, testing, reports, as-built mylars
15. Any and all applicable project related public infrastructure items including but not limited to the above shall be installed to current accepted and adopted Town standards, specifications, requirements and Town approved plans.