

**SUBSTITUTE ASSURANCE AGREEMENT FOR
CONSTRUCTION OF SUBDIVISION IMPROVEMENTS**

(Money or Negotiable Bonds)

P12-____-

THIS AGREEMENT is made and entered into by and between _____ ("Subdivider") and Pima County, Arizona ("County").

1. RECITALS

1.1. Subdivider is the subdivider of the land ("the Land") located in Pima County, Arizona and described in paragraph 2.1 of this agreement.

1.2. Development of the Land is subject to an existing agreement ("the Existing Agreement") to construct subdivision improvements entered into between Subdivider and County.

1.3. The terms of this agreement are intended to take the place of and supercede the terms of the Existing Agreement at the time substitute security in the form of money or negotiable bonds is tendered to County in fulfillment of Subdivider's obligations under this Agreement.

1.4. County and Subdivider wish to establish specific terms, conditions, and guidelines relating to the subdivision of the Land and construction of related improvements to comply with A.R.S. ' 11-806.01.

2. AGREEMENT

Based on the foregoing recitals, which are incorporated here as the intent of the parties, and in consideration of County's approval of a final plat for the Land, County, Subdivider and Trustee agree as follows:

2.1. *Property Description.* The Land is all of the real property which is the subject of the subdivision plat ("the Subdivision Plat") identified as _____,

recorded in Book _____ of Maps and Plats at Page _____ on the ____ day of _____, 20____, in the Office of the Pima County Recorder.

2.2. *Construction of Subdivision Improvements.* As a condition of subdivision approval, Subdivider hereby agrees to construct all subdivision improvements ("the Subdivision Improvements") contemplated by the Subdivision Plat, including but not limited to streets, sanitary sewers (if necessary), water and electric utilities, drainage and flood control improvements.

2.3. *Existing Utilities.* Any relocation or modification of existing utilities or public improvements required in order to construct the Subdivision Improvements shall be done at no expense to the public. Subdivider's performance of this requirement shall be considered in determining whether to release assurances under paragraphs ? and ?.

2.4. *Assurance of Construction.* This agreement is submitted as an assurance that Subdivider will construct the Subdivision Improvements, as required by A.R.S. ' 11-806.01 and Pima County Zoning Code Chapter 18.69.

2.5. *Tender of the Security.* Subdivider tenders to County with this agreement money or negotiable bonds ("the Security" or "Security") by submitting evidence acceptable to County indicating that the Security has been transferred into the control of County.

2.6. *Provisions of the Security.* The cash value of the Security shall be \$ _____, which is County's estimate of the total cost to perform Subdivider's obligations under paragraphs 2.2 and 2.3. Any rules, provisions or conditions relating in any way to the Security, including without limitation any requirements for withdrawal and use of the Security by County, shall specifically adopt by reference all of the terms of this agreement. If the terms of this agreement are inconsistent with any rule, provision or condition relating to the Security, the terms of this agreement shall control.

2.7. *Start of Construction.* Subdivider shall begin construction of the Subdivision Improvements within six months of the date of this agreement.

2.8. *Diligence.* Subdivider shall diligently pursue construction of the Subdivision Improvements. The determination of whether Subdivider is diligently pursuing construction of the Subdivision Improvements shall be made by County. Subdivider's failure to do substantial work on the Subdivision Improvements for a period of thirty consecutive calendar days shall be presumptive evidence that Subdivider is failing to diligently pursue construction of the Subdivision Improvements.

2.9. *Substitution of Assurances.* Subdivider may submit substitute assurances in a form and amount acceptable to County at any time during which Subdivider is not in default under this agreement.

2.10. *Completion of the Subdivision Improvements.* The Subdivision Improvements shall be completed by Subdivider not more than two years after the date of this agreement. The Subdivision Improvements shall not be considered completed until after they have been constructed in accordance with all applicable plans and after County has inspected them and finds them to be in compliance with the plans.

2.11. *Acceptance of the Subdivision Improvements.* County shall not accept maintenance responsibility for any of the Subdivision Improvements unless and until all of the following have occurred:

- A. They have been completed in accordance with paragraph 2.10.
- B. They have been dedicated to County by the Subdivision Plat or by some other instrument of record.

C. The dedication has been accepted by the Pima County Board of Supervisors as evidenced by approval of the dedication on the Subdivision Plat or by some other formal action.

2.12. *Return of the Security.* Within thirty days after completion of the Subdivision Improvements in accordance with paragraph 2.10, County shall return to the control of Subdivider any remaining Security.

2.13. *Withdrawal of Funds.* If County determines that Subdivider has failed to comply with the terms of this agreement, County may draw upon the Security in an amount necessary to perform Subdivider's obligations under this agreement.

2.14. *County's Option to Re-Plat Upon Default.* At County's sole option, if Subdivider defaults in its obligations under this agreement, County may re-plat all or a portion of the Land for the purpose of returning the portions of Land which are the subject of the re-plat to approximately the same boundary configurations of record which existed before the recording of the Subdivision Plat. Subdivider hereby authorizes County to execute on behalf of Subdivider the re-plat described in this section. The re-plat may exclude any dedications to the public which were made on the Subdivision Plat which are deemed necessary to serve either portions of the Land which are not re-platted, or to serve the public. Subdivider shall pay the reasonable costs incurred in re-platting. County may use some or all of the proceeds of the Security to pay for the re-plat. First class mailed notice to the last known address of Subdivider shall be given not less than thirty days before County exercises its option to re-plat under this paragraph.

2.15. *Incorporation and Annexation.* If the Land is incorporated as or annexed by a city or town, the city or town shall automatically succeed to all benefits and duties of County under this agreement.

2.16. *Termination.* This agreement shall remain in full force and effect until one of the following has occurred:

A. The Subdivision Improvements have been completed and accepted by County in accordance with paragraph 2.10 of this agreement and a Release of Assurances with respect to all the Land has been recorded in the Office of the Pima County Recorder in accordance with paragraph ?; or

B. A new subdivision plat has been recorded for the Land in compliance with any and all applicable laws and regulations; or

C. A substitute assurance agreement has been executed by and between Subdivider and County in accordance with paragraph 2.9.

2.17. *Effective Date.* This agreement is effective on the ___ day of _____, 20____, which is the date of approval of this agreement by the Pima County Subdivision Coordinator.

PIMA COUNTY, ARIZONA

SUBDIVIDER:

Pima County Subdivision Coordinator
STATE OF ARIZONA)
County of Pima) ss.

By: _____
Its: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ of

("Subdivider"), a _____ corporation, on behalf of the corporation.

My Commission Expires: _____
Notary Public

STATE OF ARIZONA)
County of Pima) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as/for Pima County Subdivision Coordinator.

My Commission Expires: _____
Notary Public