CITY CLERK
ORIGINAL



EXHIBIT H

WHEN RECORDED, RETURN TO.

City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

DEED OF TRUST AND ASSIGNMENT OF RENTS

(Developer)

| | |
|---|---|
| DATE: | November 7, 2013 |
| TRUSTOR:<br>(ADDRESS): | Habitat for Humanity Central Arizona<br>9133 NW Grand Ave<br>Peoria, Arizona 85301 |
| BENEFICIARY:<br>(ADDRESS): | City of Glendale<br>5850 West Glendale Avenue<br>Glendale, Arizona 85301 |
| TRUSTEE:<br>(ADDRESS): | City of Glendale.<br>5850 West Glendale Ave<br>Glendale, AZ 85301 |

SUBJECT REAL PROPERTY in Maricopa County, State of Arizona, described in the Legal Description attached as Exhibit A ("Property").

This Developer Deed of Trust and Assignment of Rents ("Developer Deed of Trust") is made between the Trustor, Trustee and Beneficiary above named

WITNESSETH: That Trustor irrevocably grants and conveys to Trustee in Trust, with Power of Sale, the above described real property, together with: (1) all buildings, improvements and fixtures now or hereafter placed thereon; (2) all existing leases, and all future leases executed with respect to such property; (3) all rents, issues, profits and income thereof (all of which are hereinafter called "property income"), (4) all classes of property now, or at any time hereafter, attached to or used in any way in connection with the use, operation or occupancy of such property; (5) all property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to such property, which entitle Trustor or such property to receive water or electrical power for use thereon, all property granted, transferred and assigned to Trustee hereunder is hereafter referred to as the "Property," and Trustor warrants that it is well and truly seized of a good and marketable title in fee simple to the real property hereby conveyed; that the title to all property conveyed by this Developer Deed of Trust is clear, free and unencumbered, and Trustor will forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims whatsoever;

SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income;

AND SUBJECT TO, any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance polity insuring Beneficiary's interest in the Property

**1. For the Purpose of Securing:**

1.1 Performance of each agreement of Trustor herein contained.

1 2 Payment of the indebtedness evidenced by promissory note or notes of even date herewith, and any extension or renewal thereof, in the principal sum of Forty Seven Thousand Five Hundred Dollars and 00/100 ($47,500) executed by Trustor in favor of Beneficiary or order.

1.3 Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes that are secured by this Deed of Trust.

**2. To Protect the Security of this Deed of Trust, Trustor covenants and agrees:**

2.1 To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof, not to commit, suffer, or permit any act upon said Property in violation of law, and to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

2.2 To keep all improvements now or hereafter erected on said property continuously insured against loss by fire or other hazards specified by Beneficiary in an amount not less than the total obligation secured hereby. All policies will be held by Beneficiary and be in such companies as Beneficiary may approve and have loss payable first to Beneficiary, as his interest may appear and then to Trustor The amount collected under any insurance policy may be applied upon any indebtedness hereby secured and in such order as Beneficiary may determine or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release will not cure or waive any default hereunder nor cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default.

2.3 To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses of Beneficiary or Trustee, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary to enforce this Developer Deed of Trust.

2.4 To pay before delinquent, all taxes and assessments affecting said Property, when due, all encumbrances, charges and liens, on said Property or any part thereof, which appear to be prior or superior hereto, all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

2.5 The should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said Property for such purposes; appear in and defend any action or proceeding purporting to affect the security

purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay his reasonable attorneys' fees. All amounts so paid, together with interest thereon at the same rate as is provided for in the note secured by this Developer Deed of Trust or at the highest legal rate, whichever is greater, will be part of the debt secured by this Developer Deed of Trust and a lien on the above Property.

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

**3. Recapture Provision:**

3.1 The HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.* ("HOME Program"), requires that housing provided through homeowner assistance must be secured for the use of low-income households for a period of affordability. The period of affordability period is determined based on the amount of the HOME Program subsidy.

| HOME Funds Provided | Affordability Period |
|---|---|
| < $15,000 | 5 Years |
| $15,000 - $40,000 | 10 Years |
| >$40,000 | 15 Years |

3.2 Under the HOME Program regulations, the City can recapture of all or a portion of the Home Program funds if the housing does not continue to be the "Principle Residence" of the family for the duration of affordability

3.3 Utilizing the recapture provisions of the HOME Program regulation, the fair return to the seller will calculate based on the net proceeds from the sale and the amount of the original HOME Program fund investment in the Property. The HOME Program subsidy will be recoverable any time the house is sold before the expiration of the affordability period. The method that will be used to calculate the fair return and the HOME Program subsidy to be recovered will be detailed in the Developer Deed of Trust and Developer Note for the Property. If the affordability period has been satisfied, the seller will be entitled to all net proceeds from the sale of the Property.

3.4 In the case of a foreclosure or foreclosure sale, the period of affordability will be terminated. Upon receipt of the notice that a foreclosure is pending the City will take positive steps to assert rights to a share of the proceeds from the foreclosure sale. The City will, to the extent feasible, recapture the original HOME Program investment. If the homeowner has failed to make payment to the first mortgage holder, the City will not be obligated to correct any deficient payment. The amount recaptured will be based on the amount of the net proceeds from the foreclosure sale If no proceeds are generated, the HOME Program investment will not be recaptured. The method that will be used to calculate the amount of the recapture funds will be detailed in the Developer Deed of Trust and the Developer Note. If the affordability period has been satisfied, the City will have no rights to the net proceeds resulting from the foreclosure sale.

3.5 If the original homeowner ceases to occupy the Property as the principal place of residence, voluntary or involuntarily, or upon the death of the owner (or where ownership is joint upon the death of the sole survivor having remaining interest), the original HOME Program investment will become due and payable. The method that will be used to calculate the amount of the recaptured funds will be detailed in the Developer Deed of Trust and Developer Note. If the Property is occupied as the principal residence by a valid and authorized descendant of a deceased owner, and the descendant's income level qualifies, the descendant may receive HOME Program assistance in the same manner in which the deceased owner qualified, according to the most recent income limits. The City, at its discretion, can elect to allow the occupant to live on the Property for the remained of the affordability period. If the affordability period has been satisfied, the City will have no interest in the occupants of the Property

3.6 If the homeowner is in default of the agreement, the City has the right to allow a non-profit partner to exercise a different but approved recapture/resale provision, if in the best interest of the HOME Program and the customer. Failure to take action may result in the City exercising its right to foreclose in order to satisfy the contract and comply with federal requirements.

3.7 If the Property owner does not occupy the home as their principal residence during the entire loan term, the balance will be due and payable or other arraignments can be made that meet HUD regulations that have been approved by the City.

**4. It is Mutually Agreed:**

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

4 2 That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay Without affecting the obligation of Trustor to pay and perform as herein required; without affecting the personal liability of any person for payment of the indebtedness secured hereby; and without affecting the lien or priority of lien hereof on the Property, Beneficiary may, at its option, extend the time for payment of said indebtedness, or any part thereof, reduce the payment thereon, release any person liable on any of said indebtedness, accept a renewal note therefore, modify the terms of said indebtedness, take or release other or additional security, or join in any extension or subordination agreement. Any such action by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and will not affect the priority of this Developer Deed of Trust over any junior lien Time is of the essence for this Deed of Trust.

4.3 That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Developer Deed of Trust and said note(s) for endorsement, and without liability therefore, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all Property remaining subject hereto,

and without the necessity that any sum representing the value or any portion thereof of the Property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of said Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof, (c) join in granting any easement thereon; (d) join in or consent to any extension agreement of any agreement subordinating the lien, encumbrance or charge hereof. Any Trustor signing this Trust as a surety or accommodation party or that has subjected the Property to this Trust to secure the debt of another, expressly waives the benefits of A R.S § 12-1641.

4.4 That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Developer Deed of Trust and said note(s) to Trustee for cancellation and retention, and upon payment of its fees, Trustee will release and reconvey, without covenant or warranty, express or implied, the property then held hereunder, the recitals in such reconveyance, of any matters or facts, will be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

4.5 That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default Beneficiary may at any time, without notice either by person, by agent, or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of the Trustor, enter upon and take possession of said Property or any part thereof, in his own name sue for or otherwise collect such Property income, including that past due and unpaid and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees of Beneficiary and Trustee, upon any indebtedness secured hereby, and in such order as Beneficiary may determine The entering upon and taking possession of said Property, the collection of such Property Income, and the application thereof as aforesaid, will not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice. Beneficiary will expressly have all rights provided for in A R.S. §§ 33-702(B) and 33-807.

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

4.7 Trustee will record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee will sell, in the manner required by law, said property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee at its discretion may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee will deliver to such purchaser its Developer Deed of Trust conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale. The purchaser at the Trustee's sale will be entitled to immediate possession of the Property as against the Trustee or other persons in possession and will have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statues, together with costs and reasonable attorneys' fees.

4.8 After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees of Beneficiary and Trustee, Trustee will apply the proceeds of sale to payment of: all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A R.S. § 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder. In lieu of sale pursuant to the power of sale conferred hereby, this Developer Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary will also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies will be cumulative.

4 9 That Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and Beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Developer Deed of Trust or the Property, to hold any money and documents and to withhold action or performance until an action will be brought in a court of competent jurisdiction to determine the rights asserted or the property of the demand, notice or action requested and Trustee will be without liability or responsibility for awaiting such court action. A Successor Trustee herein will without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and having so resigned will be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. "Trustee" herein will include all successor trustees. Trustee will not be liable for any action taken in its discretion and in good faith, or upon advice of counsel, or upon any information supplied or direction given by Beneficiary. Unless Trustee is adjudged grossly negligent or guilty of intentional wrongdoing or breach of contract, Trustor and Beneficiary will, upon demand, indemnify and hold harmless Trustee against all costs, damages, attorneys' fees, expenses and liabilities which it may incur or sustain in connection with this Developer Deed of Trust or any foreclosure or sale hereof or any court or other action or proceeding arising here from.

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

4.11 That Trustee accepts this Trust when this Developer Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may but is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee will be a party, unless brought by Trustee.

The undersigned Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to him at his address set forth above.

*(Signatures Appear on Next Page)*

CITY OF GLENDALE, an Arizona municipal corporation

Brenda S Fischer
City Manager

ATTEST:

Pam Hanna
City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Habitat for Humanity Central Arizona, an Arizona non-profit corporation

By: Roger C. Schwiegerhn
Its: President / CEO

STATE OF ARIZONA )
) ss.
County of Maricopa )

SUBSCRIBED AND SWORN to before me this 9 day of October, 2013, by Roger Schwiegerhn, the Developer who signed the above document.

Dana Webb
Notary Public

My Commission Expires:

April 5, 2017

DANA WEBB
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
April 5, 2017

Do not destroy this Deed of Trust OR the Note which it secures.

Both must be delivered to the Trustee for cancellation before release and conveyance will be made

**Deed of Trust and Assignment of Rents**

**"Exhibit H"**

**Legal Description**

For the property located at 6717 North 54th Drive, Glendale, Arizona 85301:

LOT 20, BLOCK 5 OF SUGAR ADDITION AMENDED, MAP BOOK 8, MAP PAGE 39

EXHIBIT I

WHEN RECORDED, RETURN TO:
City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

PROMISSORY NOTE

(Developer)

Loan Amount: $47,500 Glendale, Arizona

Date. November 7, 2013

FOR VALUE RECEIVED, the undersigned jointly and severally promise(s) to pay to the order of the City of Glendale, an Arizona municipal corporation (City), or its successors, the principal sum of Forty Seven Thousand Five Hundred Dollars and 00/100 ($47,500). This Developer Promissory Note ("Developer Note") is made on a 10-year Deferred Payment, non-interest bearing basis on and is secured by a Developer Deed of Trust and Assignment of Rents ("Developer Deed of Trust") encumbering the property identified in the Developer Deed of Trust ("Property")

This Note shall become due and payable upon any transfer, voluntary, involuntary, or by operation of law, of the Property within ten years from the date of this Note, or at any time within ten years from the date of this Note undersigned ceases to occupy or use the Property to provide services to assist low-income persons and families in obtaining decent and affordable homeownership opportunities.

This Note is secured by a Developer Deed of Trust executed by the undersigned naming the City as Beneficiary; which Deed of Trust and this Note are security for the obligations of the undersigned contained in the Development Agreement for Infill Housing Development Under the Home Investment Partnership Program ("Agreement") executed by the parties on 1/4/2013 .

The amount due at such time shall be the amount of the current fair market value of the Property less any portion attributable to the improvements made to the Property as authorized by the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program"). The current fair market value of the Property shall be established by independent appraisal. The portions of fair market value attributable to HOME Program funds will be established at completion of the rehabilitation improvements through a subsequent appraisal. Appraisals completed to determine such values shall be at the sole cost and expense of the City.

If at the end of the term of this Developer Note, the undersigned has continuously provided the services and complied with the provisions of the Agreement, the City shall consider the obligations of this Note to have been met and shall consider its security interest in the Property to be released to the undersigned.

Should default be made in the payment of any amount when due, or should the undersigned default on any obligation owed to the City under the terms of this Developer Note or the Developer Deed of Trust providing security, therefore, the whole sum of principal shall become immediately due and payable at the option of the City.

If suit or action is instituted by City to recover on this Developer Note, the undersigned will pay reasonable attorneys' fees and costs in addition to the amount due on the Developer Note.

If suit or action is instituted by City to recover on this Developer Note, the undersigned will pay reasonable attorneys' fees and costs in addition to the amount due on the Developer Note.

Diligence, demand, protest and notice of demand and protest are hereby waived and the undersigned hereby waives, to the extent which otherwise would apply to the debt evidenced by this Developer Note. Consent is hereby given to the extension of time of payment of this Developer Note, without notice.

The undersigned reserves the right to repay at any time all of the principal amount of this Developer Note in a single payment without the penalties, discount or premiums.

IN WITNESS WHEREOF, this Developer Note and Developer Deed of Trust securing the Developer Note, have been duly executed by the undersigned, as of the date above written.

CITY OF GLENDALE, an Arizona municipal corporation

Brenda S. Fischer
City Manager

ATTEST:

Pam Hanna,
City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Habitat for Humanity Central Arizona,
an Arizona non-profit corporation

By:
Its. President / CEO

STATE OF ARIZONA )
) ss.
County of Maricopa )

SUBSCRIBED AND SWORN to before me this 9 day of October, 2013, by Roger Schwierjohn, the Developer who signed the above document.

Dana Webb
Notary Public

DANA WEBB
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
April 5, 2017

My Commission Expires:
April 5, 2017

**"Exhibit I"**

**Legal Description**

For the property located at 6717 North 54th Drive, Glendale, Arizona 85301:

LOT 20, BLOCK 5 OF SUGAR ADDITION AMENDED, MAP BOOK 8, MAP PAGE 39

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
ELECTRONIC RECORDING
20130980966,11/13/2013 12:07,
DOT6717N54-12-1-1--,N

Recorded by:
City Clerk's Office
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

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**CITY OF GLENDALE, ARIZONA**

# DOCUMENTS TO BE RECORDED
# DEED OF TRUST AND ASSIGNMENT OF RENTS
# PROMISSORY NOTE
# For 6717 N. 54th Avenue

(Agreement C-8658-3)

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**(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)**